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STATE DEPARTMENT SECURITY

THE NEW PASSPORT REGULATIONS

HEARINGS

BEFORE THE

SUBCOMMITTEE TO INVESTIGATE THE ADMINISTRATION OF THE INTERNAL SECURITY ACT AND OTHER INTERNAL SECURITY LAWS

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

PART 3

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Resolved by the Internal Security Subcommittee of the Senate Committee on the Judiciary, That the following testimony taken in executive session be released from the injunction of secrecy, declassified where necessary, and with such expurgation as may be required for security or objectionable for other good cause be authorized to be printed and made public:

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Dated October 4, 1962.

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STATE DEPARTMENT SECURITY

The New Passport Regulations

WEDNESDAY, MAY 16, 1962

U.S. SENATE,
SUBCOMMITTEE TO INVESTIGATE THE ADMINISTRATION OF THE INTERNAL SECURITY ACT AND OTHER INTERNAL SECURITY LAWS, OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 11:05 a.m., in room 2300, New Senate Office Building, Senator Thomas J. Dodd, presiding.

Present: Senators Dodd and John L. McClellan.

Also present: J. G. Sourwine, chief counsel; Benjamin Mandel, director of research; and Frank Schroeder, chief investigator.

Senator DODD. The hearing will come to order.

We are pleased that you could come here, Miss Knight.

Mr. SOURWINE. May I respectfully suggest, Mr. Chairman, that both Miss Knight and Mr. Johnson be sworn and identified on the record.

Senator DODD. Raise your right hands, please. Do you each solemnly swear that the testimony you will give here will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF FRANCES G. KNIGHT, DIRECTOR, PASSPORT OFFICE, DEPARTMENT OF STATE; AND ROBERT D. JOHNSON, CHIEF COUNSEL, PASSPORT OFFICE

Miss KNIGHT. I do.

Mr. JOHNSON. I do.

I am Robert D. Johnson, chief counsel for the Passport Office.

Mr. SOURWINE. And you are Frances Knight?

Miss KNIGHT. Yes, sir. My name is Frances G. Knight. I am Director of the Passport Office of the Department of State. I have been Director of that Office since May 1, 1955.

Mr. SOURWINE. Miss Knight, we are interested in the operations and problems of the Passport Office, with special reference to internal security.

You have, I believe, through the proper channels, been notified of the general area of the committee's interest. The members of the committee know you and have for years, and the committee wants your personal opinion and experience. If you care to make a general statement respecting these matters here at the beginning of the hearing, I think, with the permission of the Chair, it would be appropriate.

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Senator DODD. Oh, yes, glad to hear anything you want to tell us, Miss Knight.

Miss KNIGHT. Thank you, Mr. Chairman. I know generally what the committee is interested in, but I do not know exactly what you wish to discuss. So I have prepared some notes dealing with the issuance of the passport. And I have arranged these notes in a chronological order. I believe that the sequence of these actions will provide a very useful background on the policies, the regulations, and other pertinent actions affecting the entire question of issuing passports. May I proceed?

Senator DODD. Yes; of course.

Mr. SOURWINE. Off the record.

(Discussion off the record.)

Senator DODD. Back on the record.

Miss KNIGHT (continuing). I have worked for the Federal Government for 22 years in various positions involving administrative work and public relations. I am not a lawyer and I am not on the policy-making level in the Department, therefore, I can answer questions and speak only from actual experience gained in operating and administering the Passport Office.

Mr. Johnson, the Chief Counsel of the Passport Office, who is here with me, is more familiar than I am with technical legal details. Between the two of us, I hope we can give you the information you seek.

The act of July 3, 1926 (sec. 211a, title 22, United States Code), places authority to issue passports in the Secretary of State under such rules as the President may prescribe. The Executive Order No. 7856, under which we are operating, was issued by President Roosevelt on March 31, 1938. Virtually the entire order, consisting of 127 paragraphs, is taken up with detailed, technical provisions relating to passport applications and supporting data such as the size and number of passport photographs to be submitted, how a married woman should sign her name and other minutiae, some of which are impractical and obsolete under present-day conditions.

Following a special statutory court decision in the District of Columbia in July 1952, which held that a passport could not be revoked without notice and a hearing, the Secretary of State issued partially revised regulations in August 1952, under which passports were denied to Communist Party members and supporters of the world Communist movement. A hearing procedure in the Passport Office with subsequent right to appeal to a Board of Passport Appeals was also provided. In June 1958, the Supreme Court, in the Briehl-Kent decision, held that there was no statutory base for these regulations.

It is my opinion that the inconsistencies and arbitrariness of Passport Office procedures in denying passports in the past have had a considerable bearing on the confusion and dissension which clouded this issue in the last few years.

The travel pattern, volume, and mode of transportation in the United States, as well as in the entire world, have changed considerably since 1926. The Passport Office has been shunted around in various areas of the Department of State. It was first called a bureau; then a division; then a permits office; then back to a division and since 1952, it has been known as the Passport Office.

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Over the years the Passport Office has grown in importance as a public service to American citizens, as a revenue-producing operation and a public relations asset, not only to the Department of State, but to the entire Federal Government. When I became Director in May 1955, the Passport Office was in dire need of help. With the sympathetic support of Congress, the Office was completely reorganized, modernized, and streamlined to cope with the tremendous workload thrust upon it by the jet age.

In March and April of 1956, and again in June 1960, the Senate Government Operations Committee published reports and hearings on the Passport Office, giving in considerable detail its past history, its functions, its administration, and operation. Some specific and, in my estimation, highly desirable recommendations for legislation were made. Unfortunately, no action was taken and the Passport Office continued with a bureau framework which was not geared to cope with or support a fast moving direct line operation.

We have, however, fared reasonably well, because we have a very measurable product—applications received and passports issued. There is little argument with an office that issues 850,000 passports a year and processes applications within 3 days after receipt. Our busiest day this year was Monday, May 7, when we received 8,023 applications in the 1 day, and 2 days later the passports were in the mail. We bring into the U.S. Treasury a little over $6½ million per year, at a cost to the Government of less than $2½ million. There is little fault to find with an office that, in the past 7 years, has increased its employee productivity by 56.7 percent. Nevertheless, I believe additional improvements can be made, but these are now more or less dependent on the administrative climate within the Department.

The more important and serious problem facing us today is the lack of passport legislation, the lack of a revised Executive order, and the lack of rules and regulations under which we can operate honestly, efficiently, and expeditiously. In the 7 years that I have been Director of the Passport Office, I have reported to a series of six administrators. This has not been easy and the lack of continuity has taken its toll out of good management and progress.

In the past 5 years I have tried to push through, by every means I know, a revised Executive order and updated rules and regulations pertaining to passport issuance. Only once did this package reach the desk of an Under Secretary, but no action was taken until early this year. Before I discuss this action, I want to illustrate some of the more glaring omissions which put the Director of the Passport Office in the position of operating in violation, or pretty close to it, of the existing but obsolete regulations.

For instance, there has never been a statutory delegation of authority to the Director of the Passport Office. While the Director is charged with the issuance of passports, the operation of the national office, its field offices, the direction of passport and citizenship work overseas, the regulations state that the Secretary of State appoints passport agents. This has never been the case, but there is, in fact, no delegation of authority to the Director to perform any of these duties.

There is no statutory definition of the U.S. passport. This omission is serious when it is necessary for the Passport Office to pick up

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a passport from the bearer for a valid reason. The question has been posed as to whether the passport is an official Government document, or does it belong to the bearer once it is issued?

Another discrepancy, in my opinion, is the fact that, by law, State courts charge a $2 fee for the execution of a passport application. Federal courts and the Passport Office and its agencies charge a $1 execution fee. This has caused considerable public confusion. The fee charged for the execution of a passport application should be uniform, regardless of where the service is rendered.

These and other matters could be cleared up by proper legislation. From practical experience, I would strongly recommend that criteria for passport refusal and limitation be spelled out by statute to provide the Department of State with a general frame of reference.

Now I would like to document the Passport Office procedures on denials prior to 1952; between 1952 and 1956; subsequent to 1956, including the latest regulations which went into effect January 12, 1962. It would be difficult to discuss the present regulations without reference to our practical experiences with the previous ones:

DENIAL PROCEDURES PRIOR TO 1952

Prior to 1952, with reliance on the absolute discretionary authority of the Secretary, the Passport Office, in denying a passport, merely informed the applicant that "it was not in the best interests of the United States" that he should have a passport. The applicant was not informed of the nature of the information upon which the action was based. There was no provision for appeal from the refusal.

The free exercise of this discretion was first tested in the *Bauer* v. *Acheson* case (106 F. Supp. 445 (1951)). Miss Bauer, a naturalized U.S. citizen, was employed as a journalist in Europe from 1944 to June 1951. On June 4, 1951, her passport was revoked without notice or hearing. No reason for the action was given other than in the opinion of the Secretary "her activities are contrary to the best interests of the United States."

A three-judge statutory court sitting in the District of Columbia held that the right to travel abroad was protected by the fifth amendment to the Constitution and the cancellation of an outstanding passport, without a hearing, deprived the bearer of liberty without due process of law.

The court also made this pertinent comment:

> This court is not willing to subscribe to the view that the Executive power includes any absolute discretion which may encroach on the individual's constitutional rights, or that the Congress has power to confer such absolute discretion. We hold that, like other curtailments of personal liberty for the public good, the regulation of passports must be administered, not arbitrarily or capriciously, but fairly, applying the law equally to all citizens without discrimination, and with due process adapted to the exigencies of the situation.

DENIAL PROCEDURES—1952 THROUGH 1956

As a result of the *Bauer* decision, the Secretary of State on August 28, 1952, promulgated regulations (secs. 51.135–51.143, title 22, CFR) which placed limitations upon the issuance of passports to persons supporting the world Communist movement. The regulations pro-

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vided that the individual should be informed of the nature of the information upon which the action was based; for an informal hearing in the Passport Office and the right of subsequent appeal to a Board of Passport Appeals. The regulations also provided that at any stage of the passport proceedings, an applicant could be required to furnish an affidavit with respect to present and past membership in the Communist Party.

In practice, however, the records show that an applicant was merely informed of the tentative denial of his application in the language of the regulations—"in your case it is alleged you are a Communist."

The affidavit with respect to present and past Communist Party membership was used indiscriminately and on the basis of the flimsiest information.

The informal hearing merely consisted of an across-the-desk interview of the applicant by a Passport Office attorney. A memorandum outlining the gist of the conversation was prepared, often a number of days after the interview had taken place. The entire procedure was very casual.

The final refusal action by the Passport Office likewise was couched in the language of the regulations with the one change, a notice of right of appeal to the Board of Passport Appeals. A circular containing the Board's rules was enclosed with the letter.

DENIAL PROCEDURES—1956

In 1956, the Passport Office, taking advantage of its reorganization, and improved staffing, made some changes in the procedures affecting denials. An applicant was informed in detail of the nature of the derogatory information consonant, of course, with security considerations. For example, he was informed of the period of Communist Party membership, the particular branch (as distinguished from unit) of the party, his official capacity, the nature of his activities, financial contributions, and the like. The applicant was also advised of his entitlement to an informal hearing and of representation by counsel.

The informal hearing procedure was established along the following lines:

The Chief of the Passport Office Legal Division acted as a hearing officer. The attorney in charge of the security branch presented the case. The passport application, tentative refusal letter, correspondence between the applicant and the Passport Office, public source data, and a résumé of the classified information were all entered into the record.

The applicant was afforded the opportunity to answer any of the allegations made against him, to present any relevant information and to testify in his own behalf.

A verbatim transcript was prepared and a copy given to the applicant or his attorney.

In the case of a final refusal, the applicant was informed in detail of the basis for the refusal. He was informed of his right to appeal to the Board of Passport Appeals. A circular setting forth the Board's rules was enclosed with the letter.

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On January 10, 1956, the Secretary amended the 1952 regulations with section 51.136 (title 22 CFR) which placed limitations on the issuance of passports to persons going abroad whose activities would violate the laws of the United States; be prejudicial to the orderly conduct of foreign relations; or otherwise be prejudicial to the interests of the United States.

An applicant who came within the provisions of this regulation was also afforded the right to an informal hearing and appeal to the Board of Passport Appeals.

WITHDRAWAL OF A PASSPORT PRIOR TO 1956

Subsequent to the promulgation of the so-called Communist regulations in August 1952, passports were withdrawn and the individual was informed along the lines of the tentative refusal of a passport application.

The withdrawal was affected either by the Immigration and Naturalization Service lifting the passport at the port of entry or by agents of the Department's Office of Security. The individual concerned was orally informed that the passport was withdrawn at the request of the Passport Office, but no basis for the action was given.

No hearing or review procedure was provided for contesting the withdrawal action, unless specifically requested by the person in interest or his attorney.

WITHDRAWAL OF A PASSPORT SUBSEQUENT TO JANUARY 1956

By the middle of 1955, the Director of the Passport Office realized that radical changes would have to be made in the procedures relating to the denial or withdrawal of a passport. There was no question but that the old procedures were arbitrary and were leading up to legal difficulties. The time was late, but nevertheless, in January 1956, we instituted procedures which closely conformed to our traditional concepts of due process.

Therefore, subsequent to January 1956, the Office of Security was utilized to withdraw passports when necessary. A letter was addressed and hand delivered to the bearer of the passport, advising him of the tentative withrawal and requesting him to give his passport to the Department's representative. The basis for this action was outlined in the letter and at the same time he was advised of his right to an informal hearing before the action became final.

Only in a few cases was the Immigration and Naturalization Service requested to pick up the passport at the port of entry. In these instances, the same procedure of advice and notice was followed. It is interesting to note that after the institution of these procedures, not once were our actions seriously challenged in the courts on procedural grounds.

At the time of the *Briehl-Kent* decision (July 16, 1958) we had approximately 65 passport applications on hand which would have been processed under the so-called Communist regulations. These involved alleged Communist Party membership as well as various other activities in support of the Communist movement. This does not mean, however, that all 65 applications would have been denied. In some

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cases, we were in the process of assembling additional data, and in others we would have asked the applicants for clarification of their activities. No doubt some of these applicants would have given us satisfactory proof that they were no longer active in the promotion of communism. On the other hand, some would have reached the tentative refusal stage. The Supreme Court decision resulted in granting passports to all such applicants.

I am very reluctant to give out figures, because it is so easy to slip into a numbers game. A qualifying word can change any figure, depending pretty much on what a witness is trying to prove. However, our records would indicate that from June 16, 1958, through December 31, 1958, 158 applications would have been processed under the Communist regulations had they been in force. In 1959, 175 would have been so processed and in 1960, the estimated figure was 117. In 1961, 96 applications came within this category.

This brings us to the Supreme Court decision of June 5, 1961, upholding the constitutionality of the order by the Subversive Activities Control Board requiring the Communist Party of the United States to register under the provisions of the Internal Security Act of 1950.

In the Passport Act, section 6 of the act is relevant. Subsection (a) of this section provides that when a Communist organization is registered under the act or is the subject of a final order of the Subversive Activities Control Board requiring registration, it is unlawful for a member of such organization to apply for a passport or the renewal of a passport. It also makes it unlawful for such a person to use or attempt to use a passport already issued.

Subsection (b) provides that when an organization is registered or required to register as a Communist-action organization under the act, it is unlawful for an officer of the Government to issue a passport to any person when he knows or has reason to believe that such person is a member of such an organization.

I would like to call your attention specifically to the language "has reason to believe" in subsection (b). I believe this to be the crux of the entire section insofar as the Passport Office is concerned.

I have with me a detailed chronology of Passport Office actions starting June 5, 1961, and carrying us through to January 12, 1962, when the Department's new regulations appeared in the Federal Register. Without dwelling on these individual actions, I believe it is worth noting that the Passport Office, once again had an opportunity on December 15, 1961, to submit to the Legal Adviser's Office, its proposed revisions of the Executive order and the Department's rules and regulations governing the issuance of passports. Once again we stressed the urgent need for revisions and in our accompanying memorandum of that date we pointed out that we were submitting regulations which were not only clear, and concise but regulations which could be administered uniformly in all the important areas of passport and citizenship.

On December 28, 1961, the Passport Office received from the Legal Adviser a draft revision of the Communist section of the regulations. We were told that a study of the comprehensive package we had submitted would take too long and only the regulations relating to the Communist issue were of immediate importance. The Legal Adviser's

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Office had rewritten the Communist part of the regulations, though many paragraphs were identical to those issued in 1952.

The most important and significant changes, however, established confrontation and the right to cross-examine witnesses, and barred the use of classified information to deny a passport. We pointed out that these changes nullified any practical and workable control of travel by American Communists. We were assured that the Legal Adviser's Office was working closely with the Department of Justice on the wording of the proposed regulations.

On January 4, 1962, a final draft of the regulations was submitted to the Passport Office for concurrence, which we refused. The same day I sent a memorandum to Mr. Michel Cieplinski, Acting Administrator of the Bureau of Security and Consular Affairs, of which we are a component office. In this paper, I set forth my reasons for not concurring with the proposed regulations. Mr. Cieplinski supported the Passport Office position. On January 6, 1962, the Passport Office was informed that the Department of State position in favor of confrontation and cross-examination of witnesses in the Communist cases, was supported by the Department of Justice. At the same time we were advised that the Department of Justice interpretation of the law was binding and that we were to deny a passport only on the basis of information that could be disclosed to the applicant.

In view of the criminal sanctions involved, the deputy Under Secretary of State, has given sympathetic understanding to my position and has assumed the responsibility of ordering me to issue the passport when under the regulations the Department finds no other alternative.

I made it abundantly clear at that time that most, if not all of our information regarding Communist Party activities is furnished by the FBI. In transmitting this information, the FBI specifically enjoins its distribution outside the Department of State.

Any regulation which states that we cannot consider confidential information makes it virtually impossible to deny passport facilities to members of the Communist Party, U.S.A., as provided by law. The only exceptions would be a handful of Communist Party functionaries on the national level who, because of their recognized positions and operations, are more or less impotent insofar as their subversive effect is concerned. These individuals are symbols or figureheads of the Communist Party and the glare of publicity over the years has dulled their influence to a great extent.

The real danger, however, lies in the issuance of passports to the relatively unknown, undercover Communists engaged in espionage, sabotage, and sedition. These are the people who can and do inestimable damage to our country at home and abroad.

On January 7, 1962, the Attorney General was quoted as saying—

Communist espionage in this country is much more active now than it ever has been.

Mr. J. Edgar Hoover, Director of the FBI, was quoted in the Congressional Record on March 19, 1962, as warning that—

The Communist threat from without must not blind us to the Communist threat from within. The latter is reaching into the very heart of America through its espionage agents and a cunning, defiant, and lawless Communist Party which is fanatically dedicated to the Marxist cause of world enslavement and destruction of the foundations of our Republic.

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These statements are alarming and frustrating when, in the practical application of the law, a regulation is developed which, in effect, forbids us to protect ourselves. We have been instructed that when we consider the application of a person whose file indicates Communist membership, we must separate, in our minds, the confidential information which cannot be used, from the public information which can be used, before recommending a denial.

I, as the issuing officer, am supposed to tailor my "reason to believe that the applicant is a member of a Communist organization" to data which can be made public regardless of how much classified information is produced by the FBI or other agencies of Government to the effect that the individual is a dangerous Communist. If the proof cannot be used in open hearings, with the right to cross-examine witnesses, I have been instructed to disregard it. In other words, I am expected to read the file, dismiss the classified information and base my decision on what can be best described as generalized public information. I maintain that no one can do this in good conscience and this places me in a difficult position between the law and the Government's expert legal advisers who interpret the law. It is a fact that under the present regulations, the more treacherous and vicious and destructive the individual may be, the less likely it is that he will be denied a passport.

It is not difficult to understand why information regarding the activities of the most dangerous Communist operators in the United States is classified and cannot be made public. It certainly is not difficult to understand why the FBI will not produce its informant agents and counteragents to be questioned by alleged Communists. What is hard to understand is why we are not permitted by law to protect ourselves from these people.

Some editorials, newspaper stories, and comments lauding the new passport regulations have been very discouraging because they reveal such abysmal ignorance of the true character of the situation with which we are faced. The public has been led to believe that, at long last, there are regulations in effect which will prevent the use of the U.S. passport for the benefit or promotion of world communism. There appears to be no realization that the few functionaries who may get caught in this very ineffective net are relatively unimportant. They are, in effect, window dressing.

I think there is a very clear choice and one which should not be too hard to make. Either we make no attempt at protecting the national interest by means of the passport, reducing it to an identification document and consequently issuing passports to anyone who can prove he is a citizen, or we develop effective legislation which, even though it may be challenged in the courts, will once and for all time resolve the question as to whether or not there actually exists the will and the right to employ every possible means to protect the United States of America from the inroads of communism. Only the Congress can make this decision.

Mr. SOURWINE. Miss Knight, counsel has purposely avoided breaking into your statement while you were making it. I think this statement raises a number of questions. I believe that when the members of the committee have had an opportunity to read the record that is made here this morning, there will be additional questions which they

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will wish to ask, I therefore respectfully suggest to the Chair that at the conclusion of the hearing today, Miss Knight be asked to stand by, to appear before the committee again at an early date.

Senator DODD. Yes, that is my plan.

Mr. SOURWINE. Now to make this record as complete as possible, Mr. Chairman, I want to offer a number of items for insertion.

First, I think we should have in the record the text of the so-called new passport regulations of the Department of State—that is department regulation 108.475, approved January 11, 1962, and filed with and printed by the Federal Register.

Senator DODD. So ordered.

(The material referred to reads as follows:)

[Reprinted from the Federal Register, Washington, Friday, Jan. 12, 1962]

TITLE 22—FOREIGN RELATIONS

CHAPTER I—DEPARTMENT OF STATE

[Dept. Reg. 108,475]

PART 51—PASSPORTS

Pursuant to the authority vested in me by Paragraph 126 of Executive Order No. 7856 dated March 31, 1938, issued under the authority of section 1 of the Act of Congress approved July 3, 1926, 44 Stat. 887 (22 U.S.C. 211a) and section 4 of the Act of May 26, 1949, 63 Stat. 111 (5 U.S.C. 151c) I hereby revise §§ 51.135 to 51.170 inclusive of Part 51 of Title 22 of the Code of Federal Regulations to read as follows:

§ 51.135 Denial of passports to members of Communist organizations.

A passport shall not be issued to, or renewed for, any individual who the issuing officer knows or has reason to believe is a member of a Communist organization registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950 as amended. (50 U.S.C., sec. 786.)

§ 51.136 Limitations on issuance of passports to certain other persons.

In order to promote and safeguard the interests of the United States, passport facilities, except for direct and immediate return to the United States, shall be refused to a person when it appears to the satisfaction of the Secretary of State that the person's activities abroad would: (a) Violate the laws of the United States; (b) be prejudicial to the orderly conduct of foreign relations; or (c) otherwise be prejudicial to the interests of the United States.

§ 51.137 Tentative denial of passports and available administrative procedures.

Any person whose application for a passport or renewal of a passport has been tentatively denied under § 51.135 or § 51.136 shall be entitled to a notification in writing of the tentative denial. The notification shall set forth clearly and concisely the specific reasons for the denial and the procedures for review available to the applicant.

§ 51.138 Procedure for review of tentative denial.

(a) A person whose application for a passport or renewal of a passport has been tentatively denied in accordance with § 51.135 or § 51.136 shall be entitled, upon request, and before the denial becomes final, to present to the Passport Office any information he deems relevant to support his application. He shall be entitled to appear in person before a Hearing Officer in the Passport Office; to be represented by counsel; to present evidence; to be informed of the evidence upon which the Passport Office relied as a basis for the tentative denial; to be informed of the source of such evidence; and to confront and cross-examine adverse witnesses.

(b) The applicant shall, upon request, by the Hearing Officer, confirm his oral statements in an affidavit for the record. After the applicant has presented his

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case, the Passport Office shall review the record and advise the applicant of its decision. In making its decision, the Passport Office shall not take into consideration confidential security information that is not made available to the applicant in accordance with paragraph (a) of this section. If the decision is adverse to the applicant, he shall be notified in writing, and the notification shall state the reasons for the decision. Such notification shall also inform the applicant of his right to appeal to the Board of Passport Appeals under § 51.139.

§ 51.139 Appeal by passport applicant.

In the event of a decision adverse to the applicant, he shall be entitled within thirty days after receipt of notice of such decision to appeal his case to the Board of Passport Appeals provided for in § 51.150.

§ 51.150 Creation and functions of Board of Passport Appeals.

There is hereby established within the Department of State a Board of Passport Appeals, hereinafter referred to as the Board, composed of not less than three officers of the Department to be designated by the Secretary of State. The Board shall act on all appeals under § 51.139. The Board shall adopt and make public rules of procedure to be approved by the Secretary.

§ 51.151 Organization of Board.

The Board of Passport Appeals shall consist of three or more members designated by the Secretary of State, one of whom shall be designated by the Secretary as Chairman. The Chairman shall assure that there is assigned to hear the appeal of any applicant a panel of not less than three members including himself or his designee as presiding officer, which number shall constitute a quorum.

§ 51.152 Chairman.

The Chairman, or his designee, shall preside at all hearings of the Board, and shall be empowered in all respects to regulate the course of the hearings and to pass upon all issues relating thereto. The Chairman, or his designee, shall be empowered to administer oaths and affirmations.

§ 51.153 Counsel to the Board.

A Counsel, to be designated by the Secretary of State, shall be responsible to the Board for the schedule and presentation of cases; for assistance in legal and procedural matters; for providing information to the applicant as to his procedural rights before the Board; for maintenance of records; and for such other duties as the Board, or the Chairman on its behalf, may determine.

§ 51.154 Examiner.

The Board may, in its discretion, appoint an examiner in any case, who may, with respect to such case be vested with any or all authority vested in the Board or the Chairman, subject to review and final decision by the Board, but an applicant shall not be denied an opportunity for a hearing before the Board unless he expressly waives it.

§ 51.155 Duty of Board to advise Secretary of State on action for disposition of appealed cases.

It shall be the duty of the Board, on the basis of the evidence on the record, to advise the Secretary of the action it finds necessary and proper to the disposition of the cases appealed to it, and to this end the Board may first call for clarification of the record; make further investigation; or take other action consistent with its duties.

§ 51.156 Basis for findings of fact by the Board.

In making or reviewing findings of fact, the Board, and all others with responsibility for so doing under §§ 51.135 to 51.154 shall be convinced by a preponderance of the evidence, as would a trial court in a civil case. In determining whether there is a preponderance of evidence supporting the denial of a passport, the Board shall consider the entire record before it. The Board shall not take into consideration any confidential security information which is not part of the record.

§ 51.157 Decisions of the Board.

Decisions shall be by majority vote. Voting may be either in open or closed session on any question except recommendations under § 51.155 which shall be in closed session. Decisions under § 51.155 shall be in writing and shall be signed by all participating members of the Board.

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§ 51.158 Delivery of papers.

Appeals or other papers for the attention of the Board may be delivered personally, by registered mail, or by leaving a copy at the office of the Board at the address to be stated in the notification of adverse decision furnished to the applicant by the Passport Office.

§ 51.159 Notice of hearing.

An applicant shall receive not less than five business days notice in writing of the scheduled date and place of hearing, which shall be set for a time as soon as possible after receipt by the Board of the applicant's appeal.

§ 51.160 Appearance.

Any party to any proceeding before the Board may appear in person, or by or with his attorney, who must possess the requisite qualifications, as hereinafter set forth, to practice before the Board.

§ 51.161 Applicant's attorney.

(a) Attorneys at law in good standing who are admitted to practice before the Federal courts or before the courts of any State or Territory of the United States may practice before the Board.

(b) No officer or employee of the Department of State whose official duties have, in fact, included participation in the investigation, preparation, presentation, decision or review of cases of the class within the competence of the Board of Passport Appeals shall, within two (2) years after the termination of such duties, appear as attorney in behalf of an applicant in any case of such nature, nor shall any one appear as such attorney in a case of such class if in the course of prior government service he has dealt with any aspects of the applicant's activities relevant to a determination of the case.

§ 51.162 Hearings.

The record of proceedings held under § 51.138 shall be made available to the applicant in connection with his appeal to the Board. The applicant may appear and testify in his own behalf, be represented by counsel, present witnesses and offer other evidence in his own behalf. The Passport Office may also present witnesses and offer other evidence. The applicant and witnesses may be examined by any member of the Board or by counsel. If any witness whom the applicant wishes to call is unable to appear personally, the Board may, in its discretion, accept an affidavit by him or order evidence to be taken by deposition. Such deposition may be taken before any person designated by the Board and such designee is hereby authorized to administer oaths and affirmations for purposes of the depositions. The applicant shall be entitled to be informed of all the evidence before the Board and of the source of such evidence, and shall be entitled to confront and cross-examine any adverse witness.

§ 51.163 Admissability.

The Passport Office and the applicant may introduce such evidence as the Board deems proper. Formal rules of evidence shall not apply, but reasonable restrictions shall be imposed as to the relevancy, competency and materiality of evidence presented.

§ 51.164 Privacy of hearings.

Hearings shall be private. There shall be present at the hearing only the applicant, his counsel, the members of the Board, Board's Counsel, official stenographers, Departmental employees and the witnesses. Witnesses shall be present at the hearing only while actually giving testimony, or when otherwise directed by the Board.

§ 51.165 Misbehavior before Board.

If, in the course of a hearing before the Board, an applicant or attorney is guilty of misbehavior, he may be excluded from further participation in the hearing. In addition, an attorney guilty of misbehavior may be excluded from participation in any other case before the Board.

§ 51.166 Transcript of hearings.

A complete verbatim stenographic transcript shall be made of the hearing by qualified reporters, and the transcript shall constitute a permanent part of the record. Upon request, the applicant or his counsel shall have the right to inspect the complete transcript, and to purchase a copy thereof.

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§ 51.167 Notice of decision.

The Board shall communicate to the Secretary of State the action that it recommends under § 51.155. In taking action upon such recommendation of the Board, the Secretary shall not take into consideration any confidential security information which is not part of the record. The decision of the Secretary shall be promptly communicated in writing to the applicant.

GENERAL APPLICABILITY OF REVIEW AND APPEAL PROCEDURES

§ 51.170 Applicability of §§ 51.138–51.167.

Except for action taken by reason of noncitizenship or geographical limitations of general applicability necessitated by foreign policy considerations, the provisions of §§ 51.135 to 51.167 shall apply in any case where the person affected takes issue with the action of the Secretary in refusing, restricting, withdrawing, canceling, revoking, or in any other fashion or degree affecting the ability of such person to receive or use a passport.

The regulations contained in this order shall become effective upon publication in the Federal Register. The provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) relative to notice of proposed rule making and delayed effective date are inapplicable to this order because the provisions thereof involve foreign affairs functions of the United States.

For the Secretary of State.

ROGER W. JONES,
Deputy Under Secretary for Administration.

JANUARY 11, 1962.

[F.R. Doc. 62–459; Filed, Jan. 11, 1961; 12:30 a.m.]

Mr. SOURWINE. I want to pay my compliments to Mr. Johnson who, on January 18, supplied the committee with reprint copies of this regulation.

Now I want to ask Miss Knight—I show you a paper of two pages, the caption being "Passports and Communism." I will ask you, are you familiar with this?

Miss KNIGHT. Yes, sir. I prepared this "Passports and Communism" paper for a documentation of what we did on a day-to-day basis after the Supreme Court's decision of June 5, 1961.

Mr. SOURWINE. Is it accurate, Miss Knight?

Miss KNIGHT. Yes, sir, it is accurate.

Mr. SOURWINE. I might say for the record, Mr. Chairman, we did not get this from Miss Knight. I noted her look of surprise when I handed it to her.

I offer this for the record at this time.

Senator DODD. It may be admitted.

(The material referred to reads as follows:)

PASSPORTS AND COMMUNISTS

The following is a chronology of actions taken by the Passport Office following the Supreme Court decision of October 9, 1961, to dismiss the petition of the Communist Party for a rehearing of the Court's decision of June 5, 1961, upholding the constitutionality of the order of the Subversive Activities Control Board requiring the Communist Party, U.S.A., to register under the provisions of the Internal Security Act of 1950.

October 9, 1961: Supreme Court dismisses Communist Party petition for a rehearing on its June 5, 1961, decision.

October 10, 1961: Passport Office issued a memorandum alerting personnel that all passport and renewal applications of persons within the purview of statute must be intercepted prior to any issuance and/or renewal as the case may be. All cases to be referred to the Legal Division of the Passport Office for handling.

November 30, 1961: Passport Office sent memorandum to Mr. Abram Chayes transmitting two lists of persons who appear to be within the purview of 50 U.S.C. 785. The lists were compiled from the records of the Passport Office.

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December 1, 1961: Passport Office sent a memorandum to Mr. Abram Chayes recommending the withdrawal of passports issued to individuals on the national levels of the Communist Party leadership; recommending the issuing of appropriate letters to such individuals concerned, notifying them of the tentative withdrawal of their passports and affording them a hearing and right to appeal.

December 7, 1961: Passport Office sent a memorandum to Mr. Abram Chayes recommending that the following statement be placed in all passport application forms, registration forms, agency notices, etc.:

Section 6 of the Internal Security Act of 1950 (50 U.S.C. 785) provides a severe penalty (fine and/or imprisonment) for a member of the Communist Party of the United States who applies for a passport or for the renewal of a passport or who uses or attempts to use a passport."

December 7, 1961: Meeting in legal adviser's office. Mr. Abram Chayes reviewed his conversations with the Department of Justice attorneys. Mr. Chayes advised Miss Knight of the Secretary's interest in not withdrawing passports but in having the statute enforced by means of criminal prosecutions in due course.

It was agreed that the Passport Office prepare a letter for Mr. Chayes' signature transmitting to Assistant Attorney General Yeagley for use in enforcement of the act, a list of persons holding valid passports who, on the basis of information supplied the Department by the FBI, appear to be within the purview of section 6 of the act.

Mr. Chayes also advised that he would soon assign someone to check the passport regulations and was informed by Miss Knight that a complete revision of the Executive order and the Secretary's regulations on the issuance of passports had been made by the Passport Office and had been held in abeyance for over a year pending some action either by the Department or legislative branch. It was agreed that the revisions be checked and brought up to date by the Passport Office. Mr. Chayes agreed to review the Passport Office presentation as a matter of urgency.

December 15, 1961: Mr. Chayes cleared the proposed warnings to be inserted in Passport Office forms and a printing order was processed immediately by the Passport Office. New placards, cards, signs, and forms were among the documents to have the warning inserted.

December 15, 1961: Passport Office sent a memorandum to Mr. Abram Chayes transmitting an original and one copy of the draft of a new Executive order and rules and regulations by the Secretary which are to supersede Executive Order No. 7856 issued on April 2, 1938, and regulations issued pursuant thereto at intervals since April 2, 1938.

December 28, 1961: Meeting in the legal adviser's office with Mr. Meeker and Mr. Lowenfeld regarding the immediate issuance of revised regulations dealing with the denial of passports to Communists.

It was decided that sections 51.135 through 51.170 of the regulations on issuance of passports be reviewed and revised prior to the completion of a comprehensive study of passport regulations and the Executive order of 1938.

Mr. SOURWINE. I want to ask one question about this.

Senator DODD. You have identified it as a paper you prepared—a copy.

Miss KNIGHT. It is a copy of a paper I prepared, yes.

Mr. SOURWINE. I note that there were a number of conferences with regard to these new regulations, and I want to ask you just one foundation question now. We can go into more detail when you come back.

Did you, at any of these conferences, agree to or sign the proposed new regulations?

Miss KNIGHT. No, sir; I did not.

Mr. SOURWINE. Did you at all times make your disagreement with the proposed new regulations quite clear?

Miss KNIGHT. I made my disagreement with the regulations quite clear.

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Mr. SOURWINE. I want to show you another document, possession of which by the committee may surprise you, Miss Knight. This is a two-page paper. Have you seen that? I will characterize this, Mr. Chairman. This is a draft of a proposed regulation with respect to passports.

Miss KNIGHT. I don't recognize this immediately, sir. It looks as though it might be a part of a memorandum.

Mr. SOURWINE. Do you know who drafted it?

Miss KNIGHT. No, sir.

Mr. SOURWINE. And you do not recall its having been presented at any meetings?

Miss KNIGHT. I don't recall it; no, sir.

Mr. SOURWINE. It might have been presented and you might not recall it.

Miss KNIGHT. That is right.

Mr. SOURWINE. I am sorry, Mr. Chairman. I had hoped that Miss Knight might be able to identify this document.

Let me try Mr. Johnson.

Mr. Johnson, can you identify this document—the document of which this is a copy?

Mr. JOHNSON. It appears to be—I have seen something similar to this, very similar to this, to it. But I just can't say whether I have seen this particular document or not.

Mr. SOURWINE. All right. You don't know what it is, then.

Mr. JOHNSON. No, sir.

Senator DODD. Do you think you have seen the original?

Miss KNIGHT. If it had a cover sheet on it—it seems to be a part of a document. And I can't recognize it as such.

Mr. SOURWINE. All right. Maybe Mr. Chayes, when he appears, can identify it.

Now, Miss Knight, I show you what purports to be a copy of a memorandum to Mr. Cieplinski from you, under date of January 4, 1962. I will ask you, is that a copy of such a memo—is it what it purports to be? Did you write that memo?

Miss KNIGHT. Yes, sir; this is my memo of January 4 to Mr. Michel Cieplinski.

Mr. SOURWINE. This was your protest against the new passport regulations.

Miss KNIGHT. Yes. And I make reference to this——

Mr. SOURWINE. I know you make reference to this in the statement you have made already.

What did Mr. Cieplinski do with this memorandum, if you know.

Miss KNIGHT. I don't know what he did with the memorandum, but I did know that as a result of this memo, he supported the passport office position.

Mr. SOURWINE. He supported your position.

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. In opposition to the new regulations.

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. Did Mr. Roger Jones see this memorandum?

Miss KNIGHT. I don't know, sir.

Mr. SOURWINE. Do you know what position he took with regard to it?

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Miss KNIGHT. No, I don't.

Mr. SOURWINE. Was Mr. Roger Jones advised of your position that if it was determined that a passport should be issued, or renewed for an individual whom you knew or had reason to believe was a member of the Communist Party, then in each and every case you wanted to get specific instructions directly from the Secretary of State.

Miss KNIGHT. Yes, sir. Mr. Roger Jones was advised of that, because I told him at a meeting.

Mr. SOURWINE. And what did he say. What was his position with regard to your position?

Miss KNIGHT. Mr. Jones had a very sympathetic understanding of my position, and he agreed that he would take the responsibility of ordering me to issue a passport in cases where the Department felt that it had to do so under the regulations.

Mr. SOURWINE. Now, if you should be ordered in that manner to issue a passport in a case where the law makes it a crime to issue it, you would be kind of in trouble, wouldn't you?

Miss KNIGHT. Yes, sir: I would be in trouble.

Mr. SOURWINE. Have you made up your mind what you would do in such a case?

Miss KNIGHT. It has already been done, sir, in two cases.

Mr. SOURWINE. What do you mean?

Miss KNIGHT. Well, in my position on two passport cases, I have indicated that I had reason to believe that the individuals involved were members of the Communist Party.

Mr. SOURWINE. And you have thereafter been directly ordered to issue passports, notwithstanding?

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. And you have done so?

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. From whom did you get the orders?

Miss KNIGHT. From Mr. Roger Jones.

Mr. SOURWINE. By direction of the Secretary of State?

Miss KNIGHT. Yes, yes, it was worded "by direction of the Secretary of State."

Mr. SOURWINE. So you felt that satisfied your requirement that you have orders directed from the Secretary.

Miss KNIGHT. Yes.

Mr. SOURWINE. Now, in what two cases was that done?

Miss KNIGHT. This was done in the case of Mr. and Mrs. Duimovich.

Mr. SOURWINE. May this go in the record, Mr. Chairman?

Senator DODD. Yes.

Mr. SOURWINE. This is the identified memorandum.

(The material referred to follows:)

JANUARY 4, 1962.

SCA—Mr. Michel Cieplinski.
PPT—Frances G. Knight.
Passport Denial to Communists.

During and since the holidays, I have had time to read through all the papers which have passed back and forth between the Passport Office and the legal adviser's office, relating to the procedures on handling passport applications from persons known or believed to be members of a Communist organization.

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You will recall that during my absence from the office in November 1961, you with Mr. Hickey and Mr. Johnson of my staff discussed various facets of this matter with Mr. Chayes and other members of the legal adviser's office.

About 2 years ago, I started working with members of my legal staff on a comprehensive revision of the Executive Order No. 7856, dated March 31, 1938, as well as a revision of the Secretary's rules and regulations on the issuance of passports. When this was completed toward the end of 1959, I tried to get it through the Bureau of Security and Consular Affairs, but was unsuccessful. In November of 1960, I brought the revision of the Executive order and the Department's rules and regulations governing the issuance of passports up to date. In my opinion, these versions were practical, workable, and protected the security of the United States.

When Mr. Roger Jones came to the Department, I advised him of this revision and he suggested that it be held in abeyance until such time as the Department could get into a study of the entire passport question. The revisions have been in my office ever since.

On December 7, 1961, during a conference I was having with Mr. Abram Chayes, he mentioned that he would get a member of his staff working on a revision of the passport rules and regulations. I told him that the job had been done and was fully documented in my office. As a result, the papers prepared by the Passport Office consisting of a new Executive order and revised regulations were turned over to Mr. Chayes on December 15, 1961.

Since that time, it was suggested by the legal adviser and his staff that section 51.135 through section 51.170 of the regulations be issued separately and in advance of a larger and complete package consisting of the Executive order and the rest of the rules and regulations. The reason being that the larger package is more time consuming and there was an element of urgency in spelling out procedures for denial of passports to Communists.

I have been advised that the proposed amended regulations received today (January 4, 1962) comprising section 51.135 through section 51.170 have been prepared in accordance with the interpretation of law by the Department of Justice.

In view of these impending passport regulations and Department of Justice interpretations, I think I should make my position clear. According to my understanding of the law and with special reference to section 785(b) of the Internal Security Act, it is unlawful for me or any other employee of the United States to issue a passport to or renew the passport of any individual if we know or have reason to believe he is a member of the Communist Party.

The new regulations received today state in part that "the Passport Office shall not make use of confidential security information that is not made available to the applicant" and that the applicant "be informed of the evidence upon which the Passport Office relied as a basis for the tentative denial; to be informed of the source of such evidence; and to confront and cross-examine adverse witnesses."

Most, if not all (99.9 percent), of our information regarding Communist Party activities is furnished by the FBI. In transmitting the information, the FBI specifically enjoins its distribution outside of the Department of State.

In effect, then, since we cannot rely on confidential information, these regulations, in my opinion, will make it virtually impossible to deny passport facilities to members of the Communist Party, U.S.A., as provided by law. The only exceptions would be a handful of Communist Party functionaries on the national level who, because of their recognized positions and operations, are more or less impotent insofar as their subversive influence is concerned. These characters are symbols or figureheads of the Communist Party and the glare of publicity has dulled their influence to some extent.

The real danger, however, lies in the issuance of passports to the relatively unknown, undercover Communists engaged in espionage, sabotage, and sedition. These are the people who can and do inestimable damage to our country at home and abroad.

This statement is borne out by the testimony of Mr. J. Edgar Hoover, the findings of the Congress set out in the Subversive Activities Control Act, and by numerous hearings into Communist Party activities held by various congressional committees.

I have been informed that the legal adviser's office is expecting a letter from the Department of Justice today defending their position and allegedly advising that the Passport Office would not be held in violation of the law if a passport

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is issued or renewed for applicants coming within the purview of section 51.135 of the Department's regulations, but against whom not sufficiently publicly known (unclassified) evidence could be used.

I do not agree with this interpretation or procedure. Therefore, I have instructed my staff to document every step taken regarding these individuals when and as they become applicants. We will proceed according to the law. If it is determined by the Department of State and/or Justice that a passport shall be issued to or renewed for an individual whom we know or have reason to believe is a member of the Communist Party then, in each and every such case, I should properly receive specific instructions directly from the Secretary of State to do so, since my authority in the passport area is delegated to me by him.

Mr. SOURWINE. Miss Knight, after the Supreme Court decisions in the passport cases, do you recall that President Eisenhower called for congressional legislation to strengthen the hand of the Secretary of State with regard to his passport authority?

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. What was the Department's position at that time? Was it in favor of passport legislation authorizing denial of passports to Communists?

Miss KNIGHT. Well, that is very hard to say, sir, because in the past 5 years there has been a great deal of shifting of position, and——

Mr. SOURWINE. You are aware that Mr. John Hanes came up and testified on two different occasions, and testified that the legislation was urgently needed—he supported the President's position, didn't he?

Miss KNIGHT. That is correct.

Mr. SOURWINE. Now, when did the Department's position change?

Miss KNIGHT. I don't think I can pinpoint the date of change.

Mr. SOURWINE. Were you aware that by early November of 1961, at least, the Department, or as a minimum, the office of legal counsel of the Department had arrived at the conclusion that no action on passport legislation was needed or desirable?

Miss KNIGHT. I have heard that.

Mr. SOURWINE. You don't know.

Miss KNIGHT. I have not been told that definitely.

Mr. SOURWINE. Can you help the committee any further with regard to this change in position, when it took place?

Miss KNIGHT. Well, I believe the Department's position may have developed from the Department of Justice interpretation of the Supreme Court decisions and the law. I believe that there have been knowledgeable persons in the Department who believed that under the present legislation they have the authority to deny passports to Communists.

Mr. SOURWINE. It wouldn't surprise you, I am sure, when I tell you I am confident that a majority at least of the Congress feels that you not only have authority to deny them, but that you have a mandate to deny them.

Miss Knight, according to the committee's information, passports outstanding January 1, 1962, included 547 held by known members of the Communist Party, of which 30 were Communist Party functionaries. Of this total of 547 passports, 368 were valid as of the end of November 1961, and the remainder required renewal as of that date.

Can you tell me if these figures as I have quoted them are correct according to your records?

Miss KNIGHT. According to my records, those figures are correct.

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Senator DODD. Would it be helpful if we knew when these passports were issued originally, or initially?

Miss KNIGHT. Yes, I believe I have that information prepared, perhaps not in exactly the form that you would wish to have it, but I have the figures, and they could be made available to the committee.

Senator DODD. That would be satisfactory—if you could make them available.

Miss KNIGHT. Yes, sir.

Senator DODD. What I would like to know is when these passports were initially issued.

Miss KNIGHT. Yes, sir.

Senator DODD. As I understand counsel, he asked if they were renewed.

Mr. JOHNSON. May I clarify that for the Chair. These would be passports issued subsequent to June 16, 1958, which was the date of the Briehl-Kent Supreme Court decision, holding that we had no legislative authority for the Communist regulation.

Senator DODD. I see. Even so, I would like to get the figures.

Miss KNIGHT. Yes, we have that.

Mr. SOURWINE. Who categorized these 547 passport holders as known members of the Communist Party? Was that on the basis of the best information available to you?

Miss KNIGHT. That is on the basis of the information available to the Passport Office; yes, sir.

Mr. SOURWINE. If the committee asks you for a list of these passport holders, and the dates on which they got their passports, do you think the State Department would let you give it to us?

Miss KNIGHT. I don't know, sir. You know, I am in trouble right now with having violated a regulation of the State Department by making available a document to this committee.

Mr. SOURWINE. To this committee? What document?

Miss KNIGHT. Well, the transcript of the hearing on the Flynn case.

Mr. SOURWINE. We subpenaed that document.

Miss KNIGHT. Yes, sir. But unfortunately I didn't go through channels. I understand that the Department's regulations are that the subpena has to be handled through the Legal Adviser's office. I have the regulation right here. May I read it—because I am in violation of it, and I think I am in trouble.

Mr. SOURWINE. Go ahead.

Miss KNIGHT. So I have some qualms about what the Department would make available to the committee.

THE HANDLING OF SUBPENAS FOR DEPARTMENT RECORDS

No office or employee is authorized to produce departmental or overseas post records or give testimony regarding information contained therein before a commitee of Congress, a court of law, or a quasi-judicial tribunal, without the specific authorization of the Secretary, the Deputy Under Secretary for Administration, the Assistant Secretary for Administration, or the Assistant Secretary for Congressional Relations. In the event the records contain classified information, the security regulations contained in section 1964 shall also apply.

Mr. SOURWINE. Mr. Chairman, I would only comment with regard to that, that that purported regulation attempts to prohibit appearances before congressional committees and testimony before congressional committees by members of an executive department properly

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subpenaed. And I think it is absolutely void. There is no power by an administrative regulation to prohibit an employee from testifying before a congressional commitee.

Senator DODD. Well, I quite agree. It seems so to me. But that is a matter——

Mr. SOURWINE. Who told you you were in trouble about furnishing that material?

Miss KNIGHT. The legal Adviser's office advised me today.

Mr. SOURWINE. Well, Mr. Chayes is out of the city we are told. Who advised you?

Miss KNIGHT. It was Mr. Lowenfeld, one of his assistants.

Mr. SOURWINE. In person or by telephone?

Miss KNIGHT. In person.

Mr. SOURWINE. Could you tell us about this conversation? Did he come to your office, or call you to his office?

Miss KNIGHT. Well, he came to my office and part of the conversation dealt with the fact that we had made available to the committee the testimony of the Flynn hearing. And I was told that I was in violation of this departmental regulation, and I should have known about it. But I just didn't.

Mr. SOURWINE. When was the regulation issued?

Miss KNIGHT. It was issued September 25, 1961.

Mr. SOURWINE. Didn't you explain to Mr. Lowenfeld that this has been subpenaed as, I might say, the committee has many times subpenaed your office for information which we wanted.

Miss KNIGHT. Yes. But he pointed out that the Department might have a reason for not honoring the subpena.

Mr. SOURWINE. In other words, the legal counsel's office is going to decide what the committee can get under subpena?

Miss KNIGHT. I don't know, sir.

Mr. SOURWINE. Well, this is what you understood to be his position?

Miss KNIGHT. Yes.

Mr. SOURWINE. Mr. Lowenfeld has been asked to come before the committee, Mr. Chairman. Perhaps we can ask him about this when he comes.

Senator DODD. Yes, I think so.

Mr. SOURWINE. Miss Knight, you have supplied the committee with information which the committee requested in a formal way. I can't speak for the committee, but I will tell you, I will be very much surprised if the committee didn't support you very fully.

Miss KNIGHT. Thank you sir.

Senator DODD. By the way, who is Mr. Lowenfeld—what is his full name and his title?

Mr. JOHNSON. I think his name is Andrea.

Mr. SOURWINE. A-n-d-r-e-a-s F. L-o-w-e-n-f-e-l-d.

Miss KNIGHT. I believe he is Special Assistant to the Legal Adviser.

Senator DODD. How long has he been such, if you know?

Miss KNIGHT. I should think for about a year now. I don't know when he came on duty, but I think he has been there about a year.

Senator DODD. Do you know anything about his background?

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Miss KNIGHT. No, sir.

Mr. SOURWINE. Miss Knight, I want to push on, because the time is a little short.

Will you look at the new regulations—section 51.137 speaks of tentative denial of passports. Is this a new term?

Miss KNIGHT. No, this is not a new section.

Mr. SOURWINE. It is not a new term?

Miss KNIGHT. It is not a new term.

Mr. SOURWINE. You knew about tentative denials before these regulations were issued?

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. Does the law say anything about tentative denials?

Miss KNIGHT. I don't believe so.

Mr. SOURWINE. But the regulations which preceded these new regulations did so.

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. Mr. Chairman, I want to offer for the record at this time a copy of a one-page paper entitled "Summary of Proposed Regulations for Issuance of Passports in Communist Cases," which was furnished to me for distribution to the members of the committee, together with a note, a copy of a note which I placed on copies of this summary and distributed to the members of the committee. The item itself is dated January 10. My note is dated January 11.

Senator DODD. Yes. It may be admitted.

(The material referred to reads as follows:)

[Confidential]

DEPARTMENT OF STATE,
Washington, January 10, 1962.

SUMMARY OF PROPOSED REGULATIONS FOR ISSUANCE OF PASSPORTS IN COMMUNIST CASES (22 CFR 51.135–170)

1. Passports shall not be issued to or renewed for any individual who the issuing officer knows or has reason to believe is a member of a Communist organization registered or required to be registered under the Subversive Activities Control Act.

2. A person whose passport application has been tentatively denied shall be notified in writing of the denial and the reasons therefor.

3. A person whose application for a passport has been tentatively denied shall be entitled to appear in person before a hearing officer in the Passport Office. At such hearing he shall be entitled to present evidence, and to examine any adverse witnesses or evidence. The decisions of the Passport Office shall be based only on evidence made available at the hearing.

4. The applicant shall be entitled to appeal from an adverse decision to the Board of Passport Appeals, appointed by the Secretary of State. The Board of Passport Appeals shall conduct a hearing at which the applicant and the Passport Office shall each have the right to present and examine evidence and witnesses. Decisions of the Board of Passport Appeals shall be based only on the record made at the hearing.

5. The Board of Passport Appeals shall recommend to the Secretary of State the action to be taken on the passport application. In acting upon such recommendation, the Secretary shall not take into consideration any confidential security information not part of the record.

6. The procedures for review shall apply also to persons affected by withdrawals, cancellations or revocations of existing passports.

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U.S. SENATE MEMORANDUM,
January 11, 1962.

DEAR SENATOR: This summary of proposed new passport regulations was supplied just before noon today by Mr. Jack Leahy of the State Department, for the information of the subcommittee. Mr. Leahy advises the regulations have been approved by the Secretary and that it is proposed to publish them in the Federal Register next Monday with the emergency clause which will make them immediately effective upon publication.

JAY SOURWINE.

Mr. SOURWINE. Now, Mr. Chairman, I ask that there be placed in the record a memorandum to me from Mr. William Lowell, of the committee's staff, under date of February 1, 1962, in response to my oral request to him for information regarding the publication of executive documents.

Senator DODD. Very well. It may be admitted.

(The material referred to reads as follows:)

FEBRUARY 1, 1962.

JAY: You asked certain information regarding the publication of executive documents.

Presidential papers have precedence. If they are received before 12:30 p.m., they will normally be published in the Federal Register of the following day.

If they are received after 12:30, they will not appear until the second day unless the White House asks immediate treatment and the Presidential document can be squeezed into the time and space limitations of the printing job.

Regarding departmental papers, there is a lag of 4 days. Thus a document received on Monday would be published on Thursday. Again there are exceptions. If earlier publication is requested, the Register will try to meet it. On the other hand, if there are charts, tables, or other illustrations, more time may be required—perhaps another 3 days. Such a situation can lead to negotiations which could result in a condensation of the document or to an overtime speedup schedule on the part of the printer. The longer time, in comparison with Presidential papers, is caused by the fact that departmental documents often are much longer than those which originate in the White House.

The Register is printed by the Government Printing Office and published (since its resumption) on a 5-day basis—Tuesday through Saturday.

W.E.L.

Mr. SOURWINE. I also ask that there be placed in the record a memorandum to me from Mr. Sam Scott, assistant counsel of the subcommittee, on the subject of the new regulation of the Department of State relative to the issuance of passports.

Senator DODD. It may be admitted.

(The material referred to reads as follows:)

FEBRUARY 5, 1962.

Memorandum to: Jay Sourwine.
From: Sam Scott.
Subject: New regulation of Department of State relative to issuance of passports (27 F.R. 344).

On February 5, 1962, Mr. Warren R. Reid, Director of the Publication Services Division, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C., made available to me his file containing the "originals" of six State Department regulations recently published in the Federal Register. Five of the six "originals" had transmittal letters attached. The "original" marked No. 3 was the above-captioned regulation which did not have a letter of transmittal attached. When this was called to the attention of Mr. Reid, he remarked, "Strangely, this one has no transmittal letter attached, apparently it must have been hand delivered by special messenger." Then Mr. Reid advised that until 2 years ago his office required transmittal letters; however, since they didn't seem to serve any useful purpose, the requirement had been discontinued. But most departments and agencies still continued the practice.

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An examination of the "original" No. 62 459, photostat copy attached hereto, revealed it was signed by Roger W. Jones, Deputy Under Secretary for Administration, and dated January 11, 1962. It was noted the signature of Mr. Jones was in blue ink and the date "Jan. 11, 1962" was in red ink in handwriting appearing to be different from that of the signature.

The time-date block stamp of the Office of the Federal Register stamped at the bottom of the last page recorded the "original" as having been filed at 12:30 p.m., January 11, 1962. An examination of the Federal Register reflected the instant regulations were published and issued January 12, 1962, 27 F.R. 344. It was noted the Federal Register set forth the time of filing of the regulation as January 11, 1962, at 12:30 *a.m.* (obviously a typographical error).

Mr. Reid said it usually takes 2 or 3 days from date of signing in the agencies to clear the paper-flow route before the Office of the Federal Register receives a document of this nature, and then if it follows the normal course, about 72 hours elapsed from the time of receipt until publication. Noting the short interim between receipt and publication in this particular case, Mr. Reid remarked, "I seem to recall that we received an advance copy of this 'Passport Regulation' so we could have the type set up in advance in order to publish it immediately in the Federal Register as soon as we received the signed 'original'." At this point Mr. Reid said he would like to call Mr. Lawshe, the Assistant Director, who was more familiar with the details and circumstances surrounding this particular transaction.

Upon being called, Mr. Lawshe came to the office of Mr. Reid and confirmed that he had handled and was familiar with the details in this instance. Mr. Lawshe said he had received a call from the State Department, describing it as not a high-level call but by some clerk, saying this was not the normal procedure but an advance copy was being sent over so that the type could be set up in advance in order to expedite the publication, that they would call and tell them when the "original" was signed, and that the "original" would be sent later. Mr. Lawshe said, however, no call was received, but the signed "original" was hand delivered by special messenger and received at the time and date as stamped in the document. Mr. Lawshe advised that inasmuch as the type had been set from the advance copy it was ready and was published the following day, January 12 in the Federal Register (27 F.R. 344).

Mr. SOURWINE. I ask that there may be inserted in the record a letter under date of January 5, addressed to Mr. Roger Jones, by Mr. J. Walter Yeagley, Assistant Attorney General, Internal Security Division, and I will state for the record this is a photostat of the letter, or a signed copy thereof, and this came to me in proper manner, being handed to me by an Assistant Attorney General, in Senator Eastland's office.

Senator DODD. Very well. It may be admitted.

(The material referred to reads as follows:)

DEPARTMENT OF JUSTICE
Washington, January 5, 1962.

Mr. ROGER JONES,
Deputy Under Secretary for Administration,
Department of State, Washington, D.C.

DEAR MR. JONES: Discussions between representatives of this Department and the Department of State with respect to implementing passport provisions of the Subversive Activities Control Act have raised the question as to whether or not officers and employees of the Department of State are obligated by the act to deny a passport where the basis for their reason to believe that an applicant is a member of the Communist Party is, and must remain, confidential for security reasons.

For the reasons expressed hereafter, the Department of Justice is of the opinion that the State Department in denying a passport should conduct a hearing based upon an open record, and that the statute does not contemplate the denial of passports on the basis of information which cannot, for security reasons, be disclosed.

Section 6(b) of the act makes it unlawful for an officer or employee of the United States to issue or renew a passport if such officer or employee "has reason to believe" that an applicant is a member of the Communist Party. It is

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our position that section 6(b) must be read to require the officer to deny a passport only where he acts on information that is capable of disclosure. If the applicant sought to contest the denial, he would, in our view, be entitled under the statute to be confronted with the precise information against him and to be apprised of the source of such information. A proceeding that may result in curtailment of the right to travel, and that does not afford an opportunity for such confrontation would raise serious questions as to whether the requirements of the due process clause were satisfied (See *Greene* v. *McElroy*, 360 U.S. 474, 496–97 (1959)). In such circumstances we believe the Supreme Court would hold that the statute should not, without more explicit language, be read to authorize curtailment of travel upon the basis of secret information. Compare *id.* at 506–08.

This construction of section 6(b) is supported by an examination of other provisions of the act. Where an organization has registered pursuant to the act and has filed a membership list, the act affords to those on the list an opportunity for a full hearing to determine whether in fact they are members (50 U.S.C., sec. 792 (c) and (d)). The hearing procedures include the right "to conduct such cross-examination as may be required for a full and true disclosure of the facts," (50 U.S.C., sec. 792(d)). Where the organization required to register has not done so, and where individual members have not been ordered to register, the hearing procedures provided by section 792 are not available, absent the filing by the Attorney General with the Subversive Activities Control Board of a petition seeking an order requiring an individual member to register. Since in such cases the fact of membership will not have been determined at any stage through a hearing, Congress must have intended that before the disabilities of section 6 are imposed on alleged members, membership be determined in a hearing to be provided by the agency imposing the disability. To conclude otherwise would be to give Congress' apparent intention to afford adequate procedural safeguards to those against whom the disabilities of the act were sought to be imposed an irregularity of application not easily explained.

If we were to conclude that the Secretary of State is required to deny a passport on the basis of secret information, we would open the door to anomalous interpretation of the act. For example, a person who was found at an open hearing before the Subversive Activities Control Board not to be required to register might, nonetheless, be denied a passport by the Secretary of State on the basis of information not disclosed at that hearing.

Consequently, as we interpret it, the statute only requires the Department of State to deny passports in cases in which it can, if subsequently called upon to do so, produce the evidence upon which the denial is based at a hearing challenging the denial. It does not follow that your Deparment must divulge information where security interests require that it be kept secret. Such an interpretation would require one to read the act as undermining the very security it was designed to promote. Rather, where it is inconsistent with security interests to divulge information as to membership, the passport should be issued and the information withheld. In such cases, the Secretary of State can properly consider that he does not have the "knowledge or reason to believe", which the statute makes a condition for the requirement that he deny a passport.

With respect to the decision as to what evidence may properly be publicly disclosed we would, of course, expect to be consulted before any information derived from this Department were made public, and would not expect such information to be disclosed without our concurrence.

Sincerely,

J. WALTER YEAGLEY,
Assistant Attorney General,
Internal Security Division.

Mr. SOURWINE. We have another letter, signed by Mr. Yeagley, and addressed to Mr. Roger Jones, under date of January 5, 1962. This is a somewhat longer letter. I ask that this also go in the record at this point.

Senator DODD. Very well, it may be admitted.

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(The material referred to reads as follows:)

DEPARTMENT OF JUSTICE,
Washington, January 5, 1962.

Mr. ROGER JONES,
Deputy Under Secretary for Administration,
Department of State, Washington, D.C.

DEAR MR. JONES: This is with reference to the letter of October 24, 1961, from Mr. Edward J. Hickey of your Department, requesting the views of this Division on procedures appropriate for the Department of State to initiate in consequence of the recently activated passport provisions of the Subversive Activities Control Act of 1950.

The responsibilities of the Departments of State and Justice in the implementation of section 6 of the act (50 U.S.C. 785), recently was the topic of discussion at conferences attended by representatives of this Department (including the Solicitor General and the Assistant Attorneys General in charge of the Office of Legal Counsel and the Internal Security Division) and representatives of the State Department (including the Legal Adviser to the Secretary). At those meetings it was the view of the Department of Justice that since the provisions of section 6 are now effective, the Departments of Justice and State have a responsibility to enforce the provisions.

As Mr. Hickey points out in his letter, the Supreme Court's recent affirmance in the case of *Communist Party* v. *Subsersive Activities Control Board* (367 U.S. 1), has resulted in bringing into operation the criminal sanctions applicable to section 6, which prohibit a member of a Communist organization (in this case, the Communist Party), which is required to be registered with the Attorney General, from applying for, seeking to renew, using, or attempting to use any passport issued under the authority of the United States. It is also unlawful under this section for any officer or employee of the United States to issue to, or renew the passport of, any individual knowing or having reason to believe that he is a member of such an organization.

Under the terms of section 6, we think it clear that subsequent to October 20, 1961 (the date on which the order requiring the party to register became "final"), any of the above activities, with one exception hereinafter discussed, by a member of the Communist Party having knowledge of the finality of the order, could afford the basis for a criminal prosecution for violation of section 6.

The exception referred to above arises out of the following circumstances: Following the 1958 decision of the Supreme Court in *Kent and Briehl* v. *Dulles* (357 U.S. 116), holding that the Secretary of State had no statutory basis to deny passports to persons because of their alleged communistic beliefs and associations and their refusal to file affidavits concerning their membership in the Communist Party, the State Department, we are informed, issued passports to about 500 individuals whom it had reason to believe were members of the Communist Party. Undoubtedly, some of the holders of these passports were lawfully traveling abroad as of October 20, 1961, when section 6 first became operative. Since the obvious purpose of the statute is to prevent travel outside the Western Hemisphere by members of Communist organizations subsequent to the effective date of the statute, it is our opinion that the "use" of a validly issued passport by a member of the Communist Party to reenter the United States after October 20 from a trip which was commenced prior to October 20 is not prescribed by section 6. To read the statute otherwise would be to require such an individual to choose between violating the statute by reentry or to forever exile himself from the country. Obviously, such interpretation could not be reasonably placed on the statute. Any use of such passport subsequent to October 20, 1961, by a member of the Communist Party for the purpose of departing from the United States would violate the "use" provision of the statute.

1. With respect to your request for our views as to what action should be taken with regard to an application for a passport or for the renewal of a passport submitted subsequent to October 20, 1961, the following are suggested for your consideration:

(*a*) It is our tentative view that as a reasonable method of implementation of the statute each passport applicant should be requested to state, in response to questions placed on the passport application form required by the regulations (22 CFR 51.14), whether he is presently a member of the Communist Party or has been a member.

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(*b*) An affirmative answer to the question as to present party membership is a sufficient basis for denial of the passport.

It has been suggested that an affirmative answer would require the Department of Justice to then prosecute the applicant for "making application" for a passport in violation of section 6(a) of the act, using as evidence of guilt the honest response made to the question posed by the Department of State.

However, we cannot conclude that Congress intended to punish, under section 6(a) of the act, individuals who perform the harmless act of simply furnishing information which under section 6(b) of the act requires the Department of State to deny them a passport. The purpose of section 6 is to prevent the party from carrying on its activities through travel of its members abroad. Penalizing honest responses to inquiries designed to obtain information enabling your department to effectuate section 6 would to some extent frustrate rather than advance its purpose. Thus, despite the literal language of section 6(a), we can only interpret it to mean that it is unlawful for those individuals who in some way conceal the fact of membership to apply for a passport. This interpretation makes section 6 more rational in its application and eliminates what would otherwise be an inexplicable inconsistency with the approach taken by Congress in section 5 of the act, 50 U.S.C. 784, which only makes it unlawful for one seeking, holding, or accepting office or employment under the United States, or employment in a defence facility to "conceal or fail to disclose the fact that he is a member of [a Communist] organization * * *." [Emphasis supplied.] Consequently, placing the question on the application will not in our view lead to the potentially bizarre consequences suggested.

(*c*) The procedure of requiring responses to questions as to party membership raises the question of what is to be done in the event an applicant refuses to answer.

He might refuse to answer on the ground that Congress may not constitutionally require the Secretary of State to deny passports because of membership in the Communist Party, or he may claim his privilege against self-incrimination. We suggest tentatively again that with respect to cases in the first category the Department of State may properly decline to process the passport application on the ground that the applicant failed to furnish relevant information. Compare *In re Anastaplo*, 366 U.S. 36, 44–45 (1961); *Bellan* v. *Board of Education*, 357 U.S. 399 (1957); *Cronan* v. *FCC;* 285 F. 2d 288 (D.C. Cir. 1960), cert. denied, 366 U.S. 904 (1961). Where, however, the Department of State is convinced that applicant's refusal to answer purely is a matter of principle and that applicant is not a member of the Communist Party we would appreciate it if the Department of State would, before deciding not to process the application, refer the case to the Department of Justice so that it may examine the case from a litigation standpoint. With respect to the second category refusal based upon invocation of the privilege against self-incrimination, we believe a refusal to process the application is also justified on the ground that the applicant failed to furnish relevant information, despite any deterrent effect that such action may have upon applicant's exercise of the privilege against self-incrimination. Compare *Nelson* v. *County of Los Angeles*, 362 U.S. 1, 7–8 (1960).

As a basis for the above action in appropriate cases, it is advisable that the Department of State issue regulations to the effect that the failure to answer pertinent questions on the passport application may be sufficient basis for a refusal to process an application. This would enable you to refuse to process an incomplete application in an appropriate situation, without requiring that you do so in all cases.

We would appreciate having your views, as well as those of your Legal Adviser, on these suggestions.

(*d*) If the answer to the question of present membership is in the negative but the answer to the question as to past membership is in the affirmative, the application form should require that additional details concerning the applicant's cessation of membership be furnished. Here, too, refusal to furnish the requested information may justify a refusal to process the application.

(*e*) If the applicant denies membership in the Communist Party, and the State Department has reliable information to establish the contrary, an administrative hearing on the question should be conducted. Since what is involved is the question of curtailment of what the Supreme Court has held to be a constitutional right to travel, the information and the source thereof upon which the Government intends to rely in the proceeding should be made a part of the open record. Compare *Greene* v. *McElroy*, 360 U.S. 474, 496–497 (1959). The

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questions raised by the situation in which the Department of State has "reason to believe" that an applicant is a member of the Communist Party but cannot, for security reasons, disclose that information are dealt with in my supplementary letter of this date.

With respect to unexpired passports presently held by members of the Communist Party issued prior to October 20, 1961, we believe you should institute withdrawal proceedings, having in mind the security considerations which are involved, as well as the question of availability of evidence which could be presented in an administrative proceeding. However, we believe that it may be desirable at this time to make requests for the return of passports now held by key members of the party, concerning whom there will be no difficulty in establishing membership in an open hearing. In the event your Department decides to take action in this regard we will be glad to confer with you as to the procedures for carrying out such action.

Sincerely,

J. WALTER YEAGLEY,
Assistant Attorney General, Internal Security Division.

Mr. SOURWINE. Miss Knight, are you familiar with that letter?

Miss KNIGHT. Yes, yes, sir.

Mr. SOURWINE. Do you know about the letter from Mr. Hickey, which the letter you now hold——

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. Answers?

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. Now, we don't have that letter from Mr. Hickey.

Mr. JOHNSON. Sir, may I interrupt you. We have the letter here.

Mr. SOURWINE. We have asked the State Department to produce it. Do you have a copy?

Miss KNIGHT. Yes, sir.

Mr. JOHNSON. Yes, sir. Mr. Leahy called me last night, and he gave me a list of five letters.

Mr. SOURWINE. Do you have them? You have three of them.

Mr. JOHNSON. Three of them; yes, sir.

Mr. SOURWINE. I understand two of them Mr. Leahy was not going to be able to produce, because he said they originated at the Department of Justice.

Mr. JOHNSON. That is right, sir. Then one letter—we have it as December 14, 1961, and another December 24, 1961—I believe the No. 5 refers to actually the October 24 letter, which you have.

Mr. SOURWINE. All right.

Mr. JOHNSON. So we just have two letters.

Mr. SOURWINE. This letter, under date of October 24, addressed to Mr. Yeagley, signed by Hickey, as Acting Director, Passport Office, is the letter answered by Mr. Roger Jones' letter of January 5, the last letter put in the record.

Miss KNIGHT. That is correct.

Mr. SOURWINE. May this also go in the record, Mr. Chairman?

Senator DODD. Very well.

(The material referred to reads as follows:)

OCTOBER 24, 1961.

Mr. J. WALTER YEAGLEY,
Assistant Attorney General,
Internal Security Division, U.S. Department of Justice.

DEAR MR. YEAGLEY: The Federal Register of Saturday, October 21, 1961, contains a notice by the Subversive Activities Control Board to the effect that the Board's order (docket No. 51-101) issued on April 20, 1953, requiring the Com-

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munist Party of the United States to register as a Communist-action organization under section 7 of the Internal Security Act of 1950 became final on October 20, 1961.

This action automatically triggers section 6 of the act which makes it unlawful for a member of the Communist Party with knowledge or notice of the final order to apply for a passport, or the renewal of a passport, issued under the authority of the United States, or to use or attempt to use a passport. Likewise, section 6(b) makes it unlawful for any officer or employee of the United States to issue or renew a passport for any individual, knowing or having reason to believe that he is a member of the party.

The Supreme Court decision of June 16, 1958, in *Kent-Briehl* v. *Dulles* (357 U.S. 116 (1958)), held there was no legislative base for the regulations of the Secretary of State placing limitations upon the issuance of passports to persons supporting the world Communist movement (22 CFR 51.135). In its brief the Government contended, in part, that the travel control statute (8 U.S.C. 1185) was a delegation of authority to the Secretary to restrict the travel of citizens through passport denials on grounds related to the national security in times of war or national emergency. In its decision the Court noted, however, that section 6 of the Subversive Activities Control Act had not yet become effective.

Since Briehl-Kent we estimate that we have issued passports to approximately 500 persons, who according to information furnished by the Federal Bureau of Investigation are members of the Communist Party. Many of these persons are known functionaries of the party. Many have already renewed their passports while others will have to renew theirs in order to preserve their validity. Passports issued prior to September 14, 1959, have an overall period of validity of only 4 years—2 years of initial validity and an additional 2 years validity upon renewal. Passports issued on and after September 14, 1959, are valid for an initial period of 3 years and are subject to an additional 2-year period upon renewal.

Recent press reports show that Elisabeth Curley Flynn, national chairman of the party, and James E. Jackson, national committeeman and editor of the Worker are the party's delegates to the 22d Congress of the Communist Party of the Soviet Union presently in session in Moscow.

Under section (b) of 8 U.S.C. 1185 as implemented by E.O. 3004 of January 17, 1953 (18 F.R. 489) it is unlawful for a citizen to depart from or enter the United States for points abroad (except generally, North, Central, and South America) without a valid passport. Section (a)(2) makes it unlawful for any person to transport or attempt to transport any person whose entry or departure is forbidden under this section.

The question arises as to what action we should take with respect to Flynn and Jackson upon their return to the United States, especially in view of the provisions of section 6(a)(2) which makes it unlawful to use or attempt to use a passport.

The *Browder* (*Browder* v. *U.S.*, 312 U.S. 335) and *Warszower* (*U.S.* v. *Warszower*, 312 U.S. 342) decisions relate to the "use" of a passport. In the *Browder* case the court held that the "use" of a passport to prove the bearer's citizenship on reentry into the United States was a "use" of the passport even though at the time passports was not customarily used by citizens (or legally required) for reentry. While in the *Warszower* case the court held that the presentation of a passport to an immigrant inspector on reentry into the United States was a "use" of the passport.

Should we authorize the Immigration and Naturalization Service to withdraw the passports of Flynn and Jackson upon arrival at a port of entry into the United States? The passports themselves are of strong, evidentiary value. Should similar action be taken upon return to the United States of other Communist Party members who are now abroad?

We would also appreciate your views as to what action we should take with respect to an application for a passport or for a renewal of a passport submitted on or after October 20, 1961, the date the order requiring the party to register became final, by an individual whom we have reason to believe, on the basis of FBI information, is a member of the Communist Party of the United States of America.

Sincerly,

EDWARD J. HICKEY,
Acting Director, Passport Office.

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Mr. SOURWINE. Now, this document you have handed me is a letter which Mr. Leahy gave you in response to our request, to be brought up here?

Mr. JOHNSON. I got the letter. Mr. Leahy has seen it.

Mr. SOURWINE. It is in response to our request.

Mr. JOHNSON. Yes, sir.

Mr. SOURWINE. This is a letter addressed to Mr. Yeagley from Mr. Cieplinski, under date of October 26, 1961. May this go in the record?

Senator DODD. Yes.

(The material referred to reads as follows:)

DEPARTMENT OF STATE,
Washington, October 26, 1961.

Mr. J. WALTER YEAGLEY,
Assistant Attorney General, Internal Security Division,
U.S. Department of Justice, Washington, D.C.

DEAR MR. YEAGLEY: Your letter of October 20, 1961, to the Secretary concerning the applicability of certain provisions of the Subversive Activities Control Act of 1950 to members of the Communist Party has been forwarded to this Bureau for reply.

The letter of October 24, 1961, from the Acting Director of the Passport Office of this Bureau posed a number of questions relating to the issuance, renewal and use of passports by Communist Party members. Your advice was also solicited regarding the withdrawal of the passports of Elizabeth Gurley Flynn, national chairman of the Communist Party and James Jackson, a member of the party's national committee and editor of the Worker, as well as of other members of the party who are now abroad.

Additional information which you requested by telephone yesterday has been furnished to you. I want to thank you for your generous offer of assistance. In turn, I want to assure you that we will cooperate fully with your office in every possible way.

Sincerely yours,

MICHEL CIEPLINSKI,
Acting Administrator, Bureau of Security and Consular Affairs.

Mr. SOURWINE. Now, you have one other document for us?

Mr. JOHNSON. That is all I have, sir.

Mr. SOURWINE. You have given us two.

Mr. JOHNSON. Yes, sir. We got this over the telephone. Apparently there was confusion, because I have two dates—October 24, 1961, Acting Director, Passport Office, re withdrawal passports from Flynn and Jackson. Then I have the same thing, December 24, 1961, E. J. Hickey to Yeagley. So I assumed they referred to the same letters.

Mr. SOURWINE. I see. In other words, it is asked for two different ways—identified two different ways, but is the same letter—and that is the letter from Hickey that is in the record now.

Mr. JOHNSON. Yes, sir.

Mr. SOURWINE. Mr. Chairman, I now offer for the record the text of a letter addressed by the vice chairman of this committee to the Attorney General, under date of January 9, 1962.

(Senator McClellan enters the hearing room.)

(The material referred to reads as follows:)

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[Confidential]

JANUARY 9, 1962

Hon. ROBERT F. KENNEDY,
Attorney General of the United States,
Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: Information has reached me that the Department of Justice, in a letter over the signature of Mr. Yeagley to Mr. Roger Jones, Deputy Under Secretary of State, has, as reported to me, tentatively taken a position which amounts in practical effect to abandonment of all efforts to use the Internal Security Act as an effective weapon against the Communist Party.

As I understand it, this letter takes the position that passports cannot be withheld from applicants without full confrontation with the adverse evidence, including the source or sources of information. Although couched in words ostensibly designed to protect the security of FBI files and sources, this nevertheless poses a threat to these very files and sources if the act should be construed to require (as I believe it clearly does) that passports be withheld from any person whom the issuing authority has knowledge or reason to believe is a member of the Communist Party, U.S.A.

I am informed that the Yeagley letter does not take this position, but rather holds that the act must be construed to require the withholding of a passport only on the basis of evidence placed or which can be placed upon an open record, and that the State Department has accordingly been advised that where reason for believing that a passport applicant is a member of the Communist Party is confidential or cannot, for security reasons, be disclosed, the passport must be issued.

According to my information, the Yeagley letter thus amounts to administrative brainwashing, i.e., it purports to say that what a State Department official knows only from confidential records or records which may not be disclosed, may not enter into his belief with respect to whether an individual is a member of the Communist Party, U.S.A.

The Yeagley letter goes further, I have been told, and indicates that an individual member of the Communist Party, U.S.A., may not be prosecuted for failing to register until he has been ordered to do so by the Subversive Activities Control Board after a petition by the Attorney General and a full hearing before the Board. As a practical matter, this would of course render the act of little value in proceeding against any substantial number of Communists, due to the very large cost of a multiplicity of hearings before the Board, and the great amount of time—possibly 5 or 6 years—involved in prosecuting a case before the Board.

In stating that the passport sanctions of the act under section 6(b) cannot be applied without granting the passport applicant a hearing, the Yeagley letter, as reported to me, would appear to imply that no sanctions under the act can be enforced against a member of the Communist Party, U.S.A., without a hearing and confrontation. If such an interpretation should prevail, it is easy to see that the usefulness of the act would be almost completely destroyed as a weapon against the Communist conspiracy.

These constructions of the act are substantially those advanced by Mr. John Abt in behalf of the Communist Party, though in some respects they seem to go even farther in the party's favor than even Mr. Abt has gone. It seems to me that for the Attorney General, as a spokesman for the administration, to give the act such a construction would be most dangerous from a political standpoint. In the eyes of the public, I believe it might appear that the Attorney General was backing away from stiff enforcement of the law. If the act is to be so construed, I'd far rather see this construction placed upon it by the courts than by a spokesman for the administration.

The practical procedure, it would seem to me, would be to proceed with a test case in a U.S. district court, against a member of the Communist Party, U.S.A., who has failed to register, with a view to getting a court determination on that point; and a policy of withholding passports from all those known or believed to be party members, whatever the basis of the information leading to such knowledge or belief, leaving the applicant in each case to his remedy in the courts, where he may seek an order to require the issuance of the passport. This would involve strong administration of the act by the executive branch, and if the construction advanced by the Yeagley letter should ultimately prevail over the determined efforts of the Department of Justice, it would nevertheless be clear

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that there is no softness toward communism on the part of the administration.

I am gravely concerned about this matter, which is why I have written to you, and so bluntly. If the Yeagley letter does not represent the view of the Attorney General or the administration, and this can be made clear speedily, I think it may be that little harm will have been done. On the other hand, if the State Department should issue and promulgate regulations in accordance with this letter, even a subsequent change of policy at the direction of the Attorney General might not be enough to avoid very serious effects, adverse to the interests of both the United States and the Democratic Party.

All best personal regards.

Sincerely,

THOMAS J. DODD,
Vice Chairman, Internal Security Subcommittee.

Mr. SOURWINE. I should like to offer for the record at this point, the text of a news release, the column of Mr. Holmes Alexander, for January 12, 1962. It deals with the subject of the new passport regulations.

Senator DODD. Very well.

(The material referred to reads as follows:)

[From the McNaught Syndicate, Inc., New York, N.Y., for release Friday, Jan. 12, 1962]

A LETTER TO THE STATE DEPARTMENT

(By Holmes Alexander)

WASHINGTON, D.C.

To: Hon. Roger Jones, Deputy Under Secretary of State for Administration.
Subject: The State Department's insecure security.

DEAR MR. SECRETARY JONES: The security system of the State Department recently has been under public chastisement for security slackness, a downgrading of security efficiency, and hence an inevitable softness-on-communism.

The American public will be even more disturbed, I believe, at the purloined letter which I am about to reveal. It was sent on January 5, 1962, by J. Walter Yeagley, Assistant Attorney General, Internal Security Division, Department of Justice. The contents of the letter reveal:

1. *An apparent unwillingness to carry out the will of Congress, which is, of course, the will of the people.*—Secretary Yeagley is a low echelon official who can only be transmitting the administration line. He has worked out a serpentine argument by which the State Department can wiggle out of its duty to apply the passport provisions of the Internal Security Act.

2. *Legal sanctuary for subversives.*—"* * * the Department of Justice," writes Secretary Yeagley in a rough draft in my possession, "is of the opinion that the State Department, in denying a passport, should conduct a hearing based upon an open record * * *." This means, in effect, that only known and hence relatively harmless subversives (but not unknown and relatively harmful ones) can be denied their country's seal of safe conduct, known as a passport.

3. *Must Congress be obeyed?*—"* * * the (internal security) statute does not contemplate the denial of passports on the basis of information which cannot, for security reasons, be disclosed." This is the language of Secretary Yeagley and the opinion of the Justice Department, which apparently is trying to thwart the will of Congress—and is searching for a suitable subterfuge. In point of fact, the statute requires a State Department official to deny a passport when he "has reason to believe" that the applicant is a Communist.

4. *Does the law mean what it says?*—Section 6(b) of the Internal Security Act plainly makes it "unlawful" to issue or renew the passport of a member of the Communist party. How does the Justice Department get around this? "It is our position that section 6(b) must be read to require the officer capable to disclose * * *" writes Justice to State. The officer of the State Department may have top secret information that the passport applicant is as Red as Khrushchev. But the officer cannot act upon secret information which is not "capable of disclosure."

5. *Is there a right to travel?*—There is permission to travel and privilege to travel. The United States spends $50 billion a year for arms which have the purpose, among kindred purposes, of protecting its citizens and their property

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anywhere in the world—but there is no right to travel, as such. Hence, there is no "right" to demand a passport. Yet Justice says to State that the passport applicant who is denied a passport "would, in our view, be entitled under the statute to be apprised of the source of such information." Unless the applicant is allowed the "confrontation" by the FBI or other officials who hold top secret information about Communist membership, the applicant is being denied "due process of law"—according to Justice. But since the public safety is paramount, Justice advised State not to encourage such a confrontation. Keep the information secret, but give the Red a passport.

6. *Soft on subversives and slack on security.*—"Consequently, as we interpret it," says Justice to State, "the statute only requires the Department of State to deny passports in cases in which it can * * * produce the evidence * * * It does not follow that your Department must divulge information where security interests require that it be kept secret * * * Rather * * * the passport should be issued and the information withheld. In such cases, the Secretary of State can properly consider that he does not have the 'knowledge or reason to believe' " that a Communist applicant for a passport is really a Communist.

Well, it all appears to be very legal and pious—but from where I sit, it sounds as though the Kennedy administration was instructing itself not to execute the Nation's laws on internal security. And unless our Nation develops a rage to win the cold war, we could lose it by just such nonsense as this.

Mr. SOURWINE. The date is interesting.

Miss Knight, have you seen that column by Holmes Alexander—did you see it in print?

Miss KNIGHT. No, sir, I have not read this column.

Mr. SOURWINE. You have not?

Miss KNIGHT. No.

Mr. SOURWINE. You do not know whether it came to the attention of the Secretary of State before publication?

Miss KNIGHT. No. I would not know.

Mr. SOURWINE. The point is, Mr. Chairman, this is for release January 12, and was circulated at least 3 days earlier. So that this column was available in mimeograph form around Washington at least as early as the 9th.

Senator DODD. That was a letter by Mr. Holmes Alexander.

Mr. SOURWINE. Sir, it is the copy for his regular syndicated column. This is the form in which it is sent to several hundred newspapers.

Senator DODD. I see.

Mr. SOURWINE. I now offer a clipping from the New York Herald Tribune of January 12, 1962, the title being "Passport Ban for Reds Is Near Revival." I ask that that go in the record at this time.

Senator DODD. Without objection.

(The material referred to reads as follows:)

[From the New York Herald Tribune, Jan. 12, 1962]

PASSPORT BAN FOR REDS IS NEAR REVIVAL

(By the Associated Press)

WASHINGTON.—The State Department is about to issue new regulations denying passports to Communist Party members for the first time in more than 3 years, it was learned yesterday.

It plans to invoke the new rules first against a number of top party officials and known members after they are published in the Federal Register this week or next.

Unlike earlier passport regulations which the Supreme Court invalidated in 1958, the new rules specifically require that the evidence against an individual be fully disclosed to him.

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The Justice Department has ruled that if the only available evidence is classified, officials must choose between disclosing it to withhold the passport, or issuing the passport to keep the information secret.

On June 16, 1958, the Supreme Court ruled 5 to 4 that the State Department lacked authority to withhold passports from Artist Rockwell Kent and Psychiatrist Walter Briehl because they refused to file non-Communist affidavits.

DUE PROCESS

Justice William O. Douglas, speaking for the majority, held that the right to travel is a "liberty" protected by due process of law and that Congress never specifically authorized the Secretary of State to withhold the right.

After this decision, State Department passport officials said they had no further power to withhold passports from Communists. It is estimated that 400 or more party members now hold passports.

1950 ACT TESTED

When the Supreme Court decided the *Kent-Briehl* cases, another act of Congress denying passports to party members had not yet been tested in the courts. This was the Subversive Activities Control Act of 1950 requiring Communist organizations to register with the Federal Government.

A section of the registration law makes it a crime for members of an organization under final registration orders to apply for, renew, or attempt to use a passport. Last June 5 the Supreme Court upheld the registration law, thereby bringing the passport provisions into effect for Communist Party members.

Unlike the earlier invalidated regulations, the new ones do not apply to Communist sympathizers but only to members or organizations under a final registration order, which so far means only the Communist Party itself.

(The following stories from the New York Times and the Washington Post later were ordered into the record:)

[From the New York Times, Jan. 12, 1962]

RIGHT TO QUESTION ACCUSERS IS GIVEN IN PASSPORT CASES—STATE DEPARTMENT TO FORBID COMMUNISTS TO MAKE ANY TRIPS OUTSIDE UNITED STATES

(By Anthony Lewis)

WASHINGTON, January 11.—The State Department will announce tomorrow new regulations that bar passports to Communist Party members but allow anyone accused of party membership to confront and cross-examine his accusers.

This is believed to be the first time that the Government has provided such an absolute right to confrontation in any internal security program. The use of confidential information has been a characteristic of many security proceedings.

Under the new regulations, the Federal Bureau of Investigation or other security agencies will still be able to insist on anonymity for a confidential informant. But in such a case, the State Department will have to issue a passport to the person accused by the informant.

ATTORNEY GENERAL APPROVES

The confrontation provision was worked out in extensive discussions among State and. Justice Department lawyers. It has the approval of Attorney General Robert F. Kennedy.

Communist Party members have been free to obtain passports since 1958. The Supreme Court then held that State Department regulations barring passports to persons affiliated with communism had not been authorized by Congress.

The new move against party members results from the Supreme Court's upholding last June of the Internal Security Act of 1950.

The Court said that the Communist Party must register under the law as a "Communist-action" group. The party has refused to do so and is being prosecuted.

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NONE MAY APPLY

The law of 1950 provides that no member of a group directed to register, whether actually registered or not, may apply for or even use a passport. The maximum penalty for violation is a fine of $10,000, 5 years in jail, or both.

To implement the Internal Security Act, the State Department will print a warning about the passport provision at the top of every passport application. It is also distributing signs to passport offices around the country warning that it is a crime for Communists to apply.

Under the act, only present party membership is a reason for withholding a passport. If any passport official has reason to believe an applicant is a member, he will tentatively deny the application.

The applicant is then entitled to present any information that he thinks shows he is not a Communist. For example, he might produce a letter in which he purportedly resigned from the party some years ago.

SPECIFIC GUARANTEES

The regulations then provide these specific guarantees to the applicant:

He shall be entitled to appear in person before a hearing officer in the Passport Office, to be represented by counsel, to present evidence, to be informed of the evidence upon which the Passport Office relied as a basis for the tentative denial, to be informed of the source of such evidence, and to confront and cross-examine adverse witnesses. Then, the regulations say: In making its decision, the Passport Office shall not take into consideration confidential security information that is not made available to the applicant.

An appeal is provided to the Board of Passport Appeals, which the regulations say must be convinced by a preponderance of the evidence as would a trial court in a civil case. The Board is barred from considering any confidential information not part of the record.

Finally, the Secretary of State will consider the case, and he, too, is prohibited from considering material not shown to the applicant.

In contrast, the regulations upset by the Supreme Court in 1958 specifically provided for the Department to consider "such confidential information as it may have in its possession."

One problem for the State and Justice Department lawyers was that the Internal Security Act made it a crime for any Government official to issue a passport "knowing or having reason to believe" that the applicant belonged to a proscribed organization.

This raised the possibility that a State Department official might be violating the law by issuing a passport to an applicant against whom there was confidential information that a security agency refused to disclose.

The difficulty was resolved by a Justice Department ruling that a passport official's "knowledge" about an applicant's party membership could only be from material made available to the applicant. This position was made formal in a letter by the Assistant Attorney General for Internal Security, J. Walter Yeagley.

[From the Washington Post, Jan. 12, 1962]

NEW RULES TO DENY TOP REDS PASSPORTS

United Press International

The State Department is about to issue new regulations denying passports to Communist Party members for the first time in more than 3 years.

It plans to invoke them first against a number of top party officials and known members after they are published in the Federal Register this week or next.

Unlike earlier passport regulations which the Supreme Court invalidated in 1958, the new rules specifically require that the evidence against an individual be fully disclosed to him.

The Justice Department has ruled that if the only available evidence is classified or officials must choose between disclosing it to withhold the passport or issuing the passport to keep the information secret.

On June 16, 1958, the Supreme Court ruled 5–4 that the State Department lacked authority to withhold passports from Artist Rockwell Kent and Psychiatrist Walter Briehl because they refused to file non-Communist affidavits.

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Unlike the earlier invalidated regulations, the new ones do not apply to Communist "sympathizers" but only to members of organizations under a final registration order, which so far means only the Communist Party itself.

Mr. SOURWINE. I have asked the Department for any press release which was issued about this matter. There was such a press release you had on January 12. It had been supplied by the Department in response to my request to Mr. Lincoln White. I also ask for a copy of the transcript of the background radio and news briefing on January 12—it took place beginning at 11:10 in the morning in the State Department—on this subject. I ask that this press release and the text of the briefing may go in the record at this point.

Senator DODD. Without objection.

(The material referred to reads as follows:)

[Department of State, press release No. 24, Jan. 12, 1962]

The Department of State announced today the promulgation of revised passport regulations dealing with denial of passports to members of Communist organizations registered or required to be registered under the Subversive Activities Control Act of 1950. These regulations are designed to implement the act in light of the recent decision of the Supreme Court in the case of the *Communist Party of the United States* v. *Subversive Activities Control Board.*

The regulations provide that a passport shall not be issued to or renewed for any individual who the issuing officer knows or has reason to believe is a member of a Communist organization registered or required to be registered under the Subversive Activities Control Act.

These regulations provide further that any person to whom a passport or renewal of a passport has been denied or whose passport has been revoked shall have the right to a hearing before the Passport Office, and shall have the right to appeal from an adverse decision of the Passport Office to the Board of Passport Appeals appointed by the Secretary of State. In such hearings, the applicant shall be accorded the right to appear, to be represented by counsel, to present evidence, to be informed of the evidence against him and the source of such evidence, and to confront and cross-examine adverse witnesses. The decision to deny a passport shall be based only on evidence which is made available to the applicant for the passport.

The Department of State also announced today that it will move to revoke the outstanding passports of certain leading officers and members of the Communist Party of the United States. This action will be taken pursuant to the discretionary authority of the Secretary in the issuance of U.S. passports, and in conformity with the provisions in the Subversive Activities Control Act relating to passports for persons who are members of Communist organizations registered or required to be registered under the act. The Department is now conferring with the Department of Justice as to the procedures for carrying out such action.

DEPARTMENT OF STATE TRANSCRIPT OF BACKGROUND PRESS AND RADIO NEWS BRIEFING, FRIDAY, JANUARY 12, 1962, 11:10 A.M., EASTERN STANDARD TIME

Mr. WHITE. Gentlemen, there has been distributed to you press release No. 24, which announces the promulgation of revised passport regulations.

I will give you an opportunity to read through this, and then Mr. Roger Jones, the Deputy Under Secretary for Administration, and Mr. Abram Chayes, the Legal Adviser, are here to answer questions. One or the other of these gentlemen may want to add to the handout.

(Please refer to press release No. 24, dated January 12, 1962, which was distributed and read at this time.)

Mr. WHITE. Do you have something to add, Roger?

Mr. JONES. Just slightly, Link.

Mr. WHITE. Would you both [Messrs. Jones and Chayes] like to come and sit up at the head of the table here, or stand?

Mr. JONES. I would like to come and stand for the moment.

Question. Are questions in order?

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Mr. WHITE. As soon as Mr. Jones gets the signal that you are all through reading the handout, he wants to add a few points.

I think they are all through, Roger.

Mr. JONES. Gentlemen, and ladies, what I would like to do this morning is to have this completely on the record for this reason: that it is quite probable that several committees of Congress will interest themselves very much in these regulations; they may want to have conferences with departmental officers and officers of the Department of Justice; they may want to talk with members of the press, and it would be a great favor to me if, indeed, we do get into this position of having further discussions with the Congress, if whatever I say here today or whatever responses I give to your questions could be a matter of record in order that, if necessary, we can just produce it with the committees.

This is a very difficult kind of an issue, as I am sure you know. There are two key sentences in this press release that I would like to call specifically to your attention. The first is at the beginning of the second paragraph:

"The regulations provide that a passport shall not be issued to or renewed for any individual who the issuing officer knows or has reason to believe is a member of a Communist organization registered or required to be registered under the Subversive Activities Control Act."

The next is the final sentence of the next paragraph:

"The decision to deny a passport shall be based only on evidence which is made available to the applicant for the passport."

Consequently, the whole issue is on those, and I have reason to believe is complicated by the nature of the information available both to the department and to the applicant.

Passport cases in the past, and certainly in the future, will sometimes depend upon security information which cannot be compromised by its release either to the applicant or to any other person. Under those circumstances, in consultation with the Department of Justice, we have adopted this posture: that we will take no action except on the basis of information which can be made available to the applicant.

This means, of course, that if there is a case in which you have evidence of a security nature which cannot be revealed that that evidence will not be used in making the decision with respect to the issuance of the passport.

This, I think, is going to attract a very considerable amount of public attention.

The Attorney General and the officers of the Department in consultation have agreed that this is the only way that we can proceed in order to prevent the compromise of security information.

I think at the moment it would probably be most useful if I now kept quiet and took your questions.

I may have to refer to counsel here [indicating Mr. Chayes].

Question. I would like to have it explained where from comes the ruling that the applicant has the right of confrontation?

Mr. JONES. Abe, do you want to take this one?

Mr. CHAYES. Well, I will. We examined the statute in the light of the cases in this general area, and in the light of other provisions of the statute as well as the Court's expressions on constitutional requirements for hearings in this kind of case. And on the basis of a review of all these criteria, the Justice Department and we independently construe the statute as requiring a full confrontation hearing.

As you know, in the *Kent* and *Briehl* cases, (Rockwell Kent and Walter Briehl) the Supreme Court held that the right to travel was a part of the liberty of which a citizen cannot be deprived without due process of law.

If you look, for example, at the *Greene* case, there it was held that under those circumstances, where the petitioner was an employee who had been refused clearance in an industrial security and under the industrial security program, it was held that he there had been deprived of liberty, and that due process of law under the circumstances required—well, let me put it the other way around: the Court could not uphold the nonclearance without a full confrontation under those circumstances.

So you have to look at those cases which provide constitutional background: then you look at the act itself, and you see there that if a person—you recall the structure of the act. The act proceeds by first requiring a finding that an organization must register: if the organization has to register it has to file a

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list of members. If a person feels that he is wrongly on that list, or if the Court feels that a person has been wrongfully omitted from that list, the person is entitled to a full confrontation hearing before the Subversive Activities Control Board to determine whether or not he goes on the list.

Now, then if you go over to section 6, the passport section, that relates to people who are members of organizations required to register, and it has been our judgment that comparing the registration provisions with the attendant requirement of full confrontation hearings against the constitutional background of the *Kent* and *Briehl* cases and the *Greene* case, and others, that the statute must be read to require a full confrontation hearing here, and that the Supreme Court—of course, it is always hard to predict what a court is going to do—but in our best judgment that is the way the Court would read it.

Ned?

Question. Well, Abe, on that point, in the decision last year on the 1959 act did the Court specifically direct their attention to the passport provisions or did it only deal with the registration?

Mr. CHAYES. Well, let me say that that was a long and complicated decision. There were several opinions.

One of the arguments made was that since the passport provisions came into effect immediately upon registration the Court would have to deal with the passport provisions as well as the registration provisions.

The Court specifically rejected that argument. It has dealt only with the registration provisions and has specifically left open the question of the constitutionality of the passport provision per se; regardless of the kind of hearing that you get, yes.

Question. This may very well be challenged?

Mr. CHAYES. Oh, I have no doubt that the constitutionality of the section itself will be challenged in court. And——

Question. Especially in view of the Court's 1958——

Mr. CHAYES. That's correct. That is correct. And I think these regulations, if I may say so, will put us in a better posture to secure a favorable decision on the constitutionality of the whole program.

Mr. JONES. Incidentally, the regulations are in the Federal Register today, gentlemen.

Question. In the administration of this—let's go to a passport office in New York—and a case comes up, where is the burden of proof?

Mr. CHAYES. Well, there are a series of stages at which this arises. Passport application is made to a passport officer—this is all laid down in the regulations—and if the passport officer believes that the section may be applicable he notifies the applicant of a tentative denial and of his rights to a hearing. The notification shall set forth clearly and precisely the specific reasons for the denial, and the procedures for review available to the applicant. Then, the applicant comes into the passport office itself and has a hearing on the denial. That hearing is itself a full hearing. And after the applicant has presented his case, the passport office shall review the record and advise the applicant of the decision.

In making its decision, the passport office shall not take into consideration confidential security information. So it then decides whether to confirm its tentative denial or not to, on the basis of a full confrontation hearing.

At that point, if the applicant wishes he can appeal to the passport review board, and the passport review board, it says, "shall be convinced by a preponderance of the evidence as would a trial court in a civil case."

So the answer to your question about who the burden is on is that at the stage of the passport review board, where it is specifically stated, the burden to show by a preponderance of evidence is on those opposing the application.

Question. But in the first stage it tends to be on the applicant?

Mr. CHAYES. Well, I don't think you can say that really, because you wouldn't make a denial unless you thought you could get it sustained.

I ought to go back—excuse me—and add one further point to the set of points which we took into account in construing the statute to require a full confrontation hearing. You have to remember that this is basically a criminal statute. While it makes it a crime for the Department to issue a passport, the basic prohibition is a criminal prohibition. It makes it a crime to apply for or to use the passport if you are a member of this kind of an organization. So it is a crime.

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Now it is perfectly clear that in order to convict the fellow of crime in open court you are going to have to have a full confrontation hearing. I just add that to the other points that I made in connection with the full confrontation.

Question. Abe, could you or Roger try to make this a little less technical?

In the past when Mr. Dulles was arguing his position on this thing he always would give you 490-some people and a half who would get away with passports who shouldn't if they didn't have the regulations he wanted. Is there any way of looking back at passports for the last year or two and say what percentage you would have had to issue if the rules were denied?

Mr. CHAYES. Since the *Kent* and *Brichl* cases, we have issued practically all of them.

Question. I mean with respect to application of this particular type.

Mr. CHAYES. We haven't made any investigation, because there has been since the *Kent* and *Brichl* cases—these old regulations have been invalidated and we have been unable to deny any passports on this ground.

Question. Could you say how many either?

Mr. CHAYES. I couldn't myself.

Question. But, Abe, isn't it—let's put the question the other way then. How many passports out now are about to be called in?

Mr. CHAYES (to Mr. Jones). Do you want to speak to that? I don't think we really know the number. We are going to start with high functionaries of the—I shouldn't say "high functionaries"—the functionaries of the national party organization, people who on the public record are——

Question. Have you got any names?

Mr. CHAYES. No, I haven't got any names yet. We are conferring with the Justice Department on the procedures for implementing that right now. The Justice Department is obviously very interested in this, because if any one of these fellows comes back with a lawsuit they are going to have to defend us, and they are going to have to defend the constitutionality of the act in it.

So we want to make very sure that the procedures are such as will support the Government's case in court if we have to go to court.

Question. This revocation doesn't get you into a bill of attainder situation, though.

Mr. CHAYES. I would not think so. But I wouldn't want to express my views on a constitutional question that will probably be involved in the litigation on the validity of the section.

Question. Well, Abe, isn't the purpose of the act itself substantively defeated by the provision that you will not use security information?

Now suppose that in a particular case the only proof that you have is security information. Then if the purpose of the act is to deny passports to Communists they are going to get them anyway.

Mr. JONES. I think you have to kind of turn it around. The basic purpose of the act is to enhance the security of the United States. And it can be argued on whichever side of the coin you happen to be on, and I am quite sure will be, but it wouldn't make a great deal of sense to defeat the security of the United States by the compromise of security information.

Question. Since the authorization in the act says that you shall withhold the passport only from a person who is required to register under this act, aren't you jumping the gun? Why don't you wait for the registration battle to be settled?

Mr. CHAYES. Well, it doesn't say a person who—it doesn't say a person required to be registered; it says—let me just read it here so I have got it. It is 786, and it says: "unlawful for any member of such organization." So it was argued by some—well, I take that back.

Question. Isn't the whole question on which organization should register?

Mr. CHAYES. The organization question has been settled as to the Communist Party by the Court.

Question. The presumption, therefore, is you will act only against members of the Communist Party.

Mr. CHAYES. That's the only one we are authorized to act against under the statute.

Mr. LOWENFELD. So far.

Question. Can't we find out who the people are who have passports outstanding? Certain leading officers and members of the Communist Party of the United States.

Mr. CHAYES. I don't think we would be prepared to.

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Question. We can start with the two delegates, the American delegates to the Soviet Communist Party Congress, representatives of the American Communist Party on the record. Are you going to revoke their passports?

Mr. CHAYES. I have to say on these matters of the details of this program we are still consulting with the Department of Justice and I really would not want to go further into the problem.

Mr. WHITE. I don't think, Abe, you could possibly go into this until action is taken.

Mr. CHAYES. That's right.

Question. Is there involved in this confrontation rights?

Mr. CHAYES. I have got counsel here, too. [Laughter.]

Question. Where did you get your law degree?

Mr. WHITE. That's all right.

Question. Why was it announced that certain leading officers who have passports outstanding are going to have them revoked? The only ones who have got them are ones that have got them and might "fly the coop" and you fellows, is that right? And we can't have it for the paper?

Mr. CHAYES. I would say, in the first place, that they can't "fly the coop" because if they do they would be committing a crime, because it is a crime to use those passports.

Question. Why don't you let them use the passports and then you can punish them for it? This makes it a crime to apply for a passport; do you have an opinion on the constitutionality of that?

Mr. CHAYES. I don't think I would express myself on the constitutionality of that. The Government intends to enforce the law as written, and the court will express itself on the constitutionality.

Question. Doesn't it follow then that for a man a member of the party to get a test, he has to commit a crime? Is that right? How else would he get a test?

Mr. CHAYES. Well, the withdrawal program may provide a test. This withdrawal program that we have been talking about; if any member of the party wishes to litigate the withdrawal.

Question. I am talking about a party member who doesn't have a passport now.

Mr. CHAYES. If he doesn't have a passport now, he must, as you say—he must take the risk of committing a crime in order to test the act. That is not a rare thing in constitutional law, you know.

Question. This same Communist, I take it, can travel in Canada, Central America, and South America where passports are not required, are they?

Mr. CHAYES. There is nothing in the law that prohibits him from doing that.

Question. And what happens if he gets "down" there and wants to go to Europe, or "up" there?

Mr. CHAYES. There is nothing in the law—well, wait a minute.

Mr. LOWENFELD. He can only go south of the border if he does not intend to go from there to Europe.

Mr. CHAYES. Well, if he goes, he violates the law.

Mr. LOWENFELD. He violates the law and the penalty is it is a crime to travel without a passport, except under the exceptions, which is to South America.

Question. Abe, is there anything in the present regulations which would make it possible for the Department, if it chose, to deny a passport, say, to Mr. Rockefeller?

Mr. CHAYES. That would make it "possible" or "impossible."

Answer. No, "possible."

Mr. CHAYES. I don't think so; no.

Question. What is the time element involved in this finding—is it current membership?

Mr. CHAYES. The language of the statute in—let me read it again, because that's the language. It is, yes, "shall be unlawful for any member of such organization with knowledge or notice that such organization is registered, or that the order has become final, to make application for a passport."

So the time as of which membership, as of which the man has to be a member in order to commit a crime is the time of application for use.

Question. Is it possible then for a person to resign from the party and to apply; and then get back into the party?

Mr. CHAYES. Well, if you present——

Mr. LOWENFELD. That would be a crime.

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Mr. CHAYES. You present a hypothetical state of facts. Let me put it this way: If a person has bona fide and clearly quit the party, past membership would not make this a crime or not make it wrongful to apply for a use of passport.

Now you start asking, "Well, what is bona fide?"

Question. Yes.

Mr. CHAYES. I say this: We are just going to look at this on the facts of the cases as they come up.

Question. Well, it seems as if he intends to go through subterfuge; then the evidence you would have against him would be FBI evidence, which you couldn't disclose at a hearing. So for practical purposes all the guy has to do is say, "I left the party, try to prove that I didn't, and give me my passport."

Mr. CHAYES. I don't think that is true, because the law really is pretty clear on the fact that past membership is a basis for an inference that it continues. So the fellow's unsupported statement that he resigned would not necessarily outweigh the inference that was available from evidence of past membership.

Question. He could give you a letter of resignation pretty quickly, couldn't he?

Mr. CHAYES. Well, all I have to say is that these are the kinds of issues that the board will have to be dealing with in every case. It is up to the FBI or appropriate security agency to determine whether in its judgment it is more important to keep this guy in the country or to keep the information confidential.

Question. What is the composition of the Review Board?

Mr. CHAYES. The Review Board is made up of officers of the Department appointed by or designated by the Secretary. It should not be less than three officers of the Department, and one of them will be chairman, and there is a counsel to the Board who presents the cases before it, and so on.

Question. Does the applicant bear the cost of all this litigation himself?

Mr. CHAYES. In our system of law anyone who wants to try a case has to pay for it.

Question. Abe, are you taking a kind of precautionary step on this matter of the revocation of passports when you say: "This action will be taken pursuant to the discretionary authority of the Secretary * * *"?

That's in case the other thing doesn't stand up?

Mr. CHAYES. No. The discretionary authority of the Secretary is authority to withdraw a passport in case he goes where he has authority not to issue it. So that the two are coterminous, in effect. That's our position. I think it is pretty clear that that is the case.

Question. A background question: Does possession of a passport incur a person's right to return to the country?

Mr. CHAYES. I think a person has to be a citizen to get back into the country. If he is a citizen he can get back in. One way of proving he is a citizen is to exhibit his passport. But I would suppose if he had other satisfactory proof of citizenship he could get back in.

Question. Mr. Jones, has this yet been discussed with any of the committees on the Hill?

Mr. JONES. The committees on the Hill have been notified of the regulations. They are aware of the content of them, and of the problems which we see. It has not been discussed in terms of what is going to happen next.

Question. Can you say how long ahead of the fact they were notified—the committees?

Mr. JONES. We started that process—when? Two days ago. This week. I think it was on Wednesday.

Question. Well, I think a contention up there is the way this regulation works out makes the law meaningless insofar as being able to bar a passport from a Communist. I am wondering——

Mr. JONES. I have no doubt that this contention will be made.

Question. Do you feel that this is administratively effective?

Mr. JONES. Do I think we can administer this act?

Question. That this will be effective in keeping passports out of the hands of Communists?

Mr. JONES. I don't know. Because I don't think we know yet, I don't think anyone knows yet, the nature of the evidence that will be adducible in connection with individual cases. You can only infer.

Mr. CHAYES. I would state further that at a minimum it will permit us to deny passports to more Communists than we have been able to do in the past year and a half, because we have been able to deny none on that ground in the past year and a half.

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Question. There is—this is not a legal question—a lot of fellows will wonder why you don't let these people leave the country and then take up the problem when they try to get back. There is a well-known case, as you know, of a character who was not disturbed until—apparently, he went to England, and then we wouldn't allow him back. Why isn't that standard practice?

Mr. CHAYES. Well, part of it is that we don't have any—I mean part of these problems are legislative; others are——

Question. Philosophic?

Mr. CHAYES. No. Others have to do with really other agencies having security responsibilities. We are only in this business because it happens that the Secretary of State has to issue passports. And that is really the way we get into the act.

THE PRESS. Thank you very much.

(Whereupon, at 11:38 a.m., the press briefing was concluded.)

Mr. SOURWINE. Now, the reason, Mr. Chairman, that I put this material in is because it appears extremely likely, at least, that the Associated Press story, which was carried in the morning papers of the 12th in New York, was in fact taken from this press release of the 12th by the State Department. The press release wasn't given out to the press generally until nearly noon on the 12th, long after the Associated Press story had moved on the night wire and been printed in the morning papers of that day, which would appear to indicate that to certain correspondents at least this press release was given out or leaked out the day before. And the question arises, in view of some of the statements at the press briefing, whether the Department did not in fact have knowledge of Mr. Holmes Alexander's column, and rush into print with this other version of the action. I think it is a matter for the committee to consider.

I now offer, Mr. Chairman, the text of a news story appearing in the Washington Evening Star of January 13, entitled "Senators Hit Passport Rule as Too Soft." This refers to the reaction of certain Senators to the new regulations. I think it probably should be stated, since one member of the committee is mentioned here, Senator Keating, that in addition to the request of Senator Keating, which is mentioned in this news story, other Senators also have asked the committee to go into the matter of these regulations, including both the vice chairman and present presiding officer, and the chairman.

Senator DODD. Very well.

(The material referred to reads as follows:)

[From the Washington Evening Star, Jan. 13, 1962]

SENATORS HIT PASSPORT RULE AS TOO SOFT

(By the Associated Press)

The new passport regulation covering persons accused of being Communists has drawn the fire of Congressmen who think the rule isn't tough enough.

It is "a step backward in the control and supervision of the Communist elements," said Senator Hickenlooper, Republican, of Iowa.

Senator Lausche, Democrat, of Ohio, declared "The order does not deal adequately with the problem and legislative action is necessary."

The new regulation was announced yesterday by the State Department. Under it, passports will be denied to known Communists but a person accused of being a Red would be permitted to examine the evidence against him at an appeal hearing.

After a Supreme Court decision in 1958 Communist Party members were permitted to receive passports.

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CONTROL ACT UPHELD

But last year the Supreme Court upheld the 1950 Subversive Activities Control Act which bars issuance of passports to Communists.

The new passport procedure is based in part on that decision.

The principal criticism of the new procedure is aimed at the right given to persons denied a passport to appeal at hearings where they can examine the evidence and confront their accusers.

This, critics contend, will prevent use of confidential FBI material at the hearings and thus will allow all but self-declared Communists to get passports.

The State Department's legal adviser, Abram Chayes, and Roger W. Jones, Deputy Under Secretary for Administration, explained the new procedure to newsmen yesterday.

BASED ON COURT RULINGS

Mr. Chayes said that on the basis of court decisions and on the Anti-Subversive Act itself. State and Justice Department legal advisers concluded that persons accused of being Communists must be permitted to examine the evidence used in the decision against them.

Mr. Jones acknowledged this would rule out use of confidential information in turning down a Communist's application but said it was still better than the situation prevailing after the 1958 decision permitting Communists to receive passports.

However, Senator Mundt, Republican of South Dakota, said the new regulation provides "nothing anywhere near the safeguards" intended by the Internal Security Act. He said he was preparing a protest to the Justice and State Departments.

Senator Keating, Republican, of New York, said the new procedure is an improvement "on blanket issuance of passports to any known Communist or traitor who applies." But at best, he added, it is a stopgap measure. He said he would call for hearings on the situation by the Senate Internal Security Subcommittee.

Mr. SOURWINE. I now offer, Mr. Chairman, the letter under date of January 16, addressed to the Secretary of State by the vice chairman of this committee with regard to the new passport regulations.

Senator DODD. Without objection.

(The material referred to reads as follows:)

JANUARY 16, 1962.

Hon. DEAN RUSK,
The Secretary of State, Department of State,
Washington, D.C.

DEAR MR. SECRETARY: About noon on January 11 Mr. Leahy of the State Department delivered to the chief counsel of the Internal Security Subcommittee, for the information of the subcommittee, a one-page "Summary of Proposed Regulations for Issuance of Passports in Communist Cases." A copy of this summary was delivered to me within the hour.

Counsel was told the Department proposed to publish these new regulations in the Federal Register on Monday, January 15, with the emergency clause which would make them immediately effective upon publication. The regulations were in fact published in the Federal Register of January 12, 1962.

For several reasons, which I shall set forth below, I plead with you to reconsider and to withdraw these regulations.

Here are my reasons for this plea:

(1) As the Department's summary points out, the new regulations set up a procedure for "tentative denial" and grant an absolute right of hearing in case of any such "tentative denial" and then provide unequivocally that the applicant, at the hearing on the "tentative denial," shall be entitled "* * * to examine *any* adverse witnesses or evidence." [Emphasis added.] The effect of this would be to require a disclosure to any Communist who is a passport applicant of all the evidence in the possession of the Department which is adverse to him. This would involve simply devastating compromise of FBI files and sources.

(2) The Internal Security Act makes it a criminal offense to issue a passport to an individual whom the issuing officer knows or has reason to believe is a member of a Communist-action organization, required to be registered under the

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Subversive Activities Control Act. The SACB order requiring the Communist Party, U.S.A., to register under the act has become final. But the new regulations require that decisions of the Passport Office on the issuance of passports shall be based only on evidence made available at the hearing, and that decisions of the Board of Passport Appeals shall be based only on the record made at the hearing, and that in acting upon the recommendation of the Board of Passport Appeals respecting action to be taken on a passport application, the Secretary of State shall not take into consideration any confidential security information not part of the record. This amounts to an attempt at administrative brainwashing. The Passport Office, passport officials, and even the Secretary himself, are told that they must forget what they know about an applicant if the knowledge is based on confidential information not placed on the public record.

(3) The proposed new regulations appear to place the Secretary of State in an absolutely impossible position. On the one hand, he is forbidden by law to issue a passport to an applicant whom he knows or has reason to believe is a member of the Communist Party, U.S.A. The Secretary is the sole judge of his own belief. But by these regulations the Secretary appears to be telling himself that if he knows something adverse to an applicant but does not order it into the public record, he may forget it; or, to state it another way, that if his duty to protect FBI files and sources requires him to keep information out of the public record, he must issue a passport to the applicant notwithstanding the fact that the confidential information is sufficient to convince him that the applicant is a member of the Communist Party, U.S.A.

(4) At best, the new regulations appear to require that where evidence of Communist Party membership is confidential or, in order to protect FBI files and sources, cannot be put on the public record, passports must be issued to Communist applicants. At worst, the new regulations appear to provide that passport applicants shall be given access to FBI files and apprised of FBI sources of information, but still cannot be denied passports unless all the adverse evidence is placed on the public record.

(5) By embracing fully the doctrine of the right of complete confrontation in passport cases, the new regulations adopt the view most favorable to the Communist Party with respect to interpretation of the Subversive Activities Control Act.

In testifying before the House Committee on Un-American Activities on June 5, 1959, Mr. John W. Hanes, Jr., at that time Administrator, Bureau of Security and Consular Affairs, Department of State, declared:

"I can say bluntly that any legislation concerning denial of passports to Communist supporters would be meaningless and would not achieve any purpose if it prohibited the Government from utilizing confidential information. Almost without exception, dangerous cases in the Communist area involve confidential information and investigative sources. Indeed, the more recent and meaningful our information is, the more likely it is that it has come from current confidential investigative sources within the Communist movement."

Now the Department has done by regulation just what Mr. Hanes declared would be meaningless and would not achieve any purpose if done by legislation.

The Subversive Activities Control Act was directed against Communist organizations. I would hope, Mr. Secretary, that in the administration of such portions of this act as fall within your jurisdiction, you would consider it desirable to enforce the act as strongly as possible against the Communist Party, U.S.A., and members of that party. If there is to be an interpretation of the act which gives passports to members of the Communist Party, I had far rather see this interpretation applied by the courts than imposed by administrative order of the Secretary of State, speaking for a Democratic administration.

Most respectfully, I suggest that you consider simple compliance with the law by refusing to issue a passport to any applicant whom the issuing officer knows or has reason to believe is a member of the Communist Party, U.S.A., leaving the applicant in each such case to seek in the courts whatever remedy he thinks is available to him.

The Secretary of State can never be criticized for obeying a court order; but I must say frankly that I believe that criticism will be severe and nationwide if it becomes known the Department of State has promulgated an interpretation of the statute under which passports will be issued to Communists.

Best personal regards and all good wishes.

Sincerely,

THOMAS J. DODD,
Vice Chairman, Internal Security Subcommittee.

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Mr. SOURWINE. I now offer the letter of Mr. Frederick G. Dutton in reply to the letter from Senator Dodd under date of January 16.

Senator DODD. Without objection.

(The material referred to reads as follows:)

DEPARTMENT OF STATE,
Washington, January 29, 1962.

Hon. THOMAS J. DODD,
Vice Chairman, Internal Security Subcommittee,
Committee on the Judiciary, U.S. Senate.

DEAR SENATOR DODD: The Secretary has asked me to reply to your letter of January 16, 1962, concerning the new passport regulations.

First let me say that we regret any misunderstanding that may have been occasioned by publication of the regulations on January 12. As I believe Mr. Leahy of my office informed the chief counsel of the Internal Security Subcommittee, the intention was to put the regulations into effect with as much dispatch as possible, since more than 6 weeks had passed since the entry into force of the order requiring the Communist Party of the United States to register under section 7 of the Subversive Activities Control Act. There was thus a period in which persons possibly coming under the act were applying for passports with no regulations in effect under which the Department could deny them passports. As a matter of courtesy to the interested committees of the Congress, we gave them advance notice and distributed a summary of the regulations. Because of the urgency of the matter, and because of the fact that the text of the regulations was not very long, it proved possible for the Federal Register to cut the normal time between submission and publication, and to publish the regulations on Friday, January 12, rather than on the following Monday.

Coming now to the substantive points which you make with respect to the regulations, I shall take them up in order. I am also taking the liberty of enclosing a copy of the letter of January 5, 1962, from Mr. J. Walter Yeagley to Mr. Roger Jones, which sets forth the views of the Department of Justice with respect to some of the points you raise.

1. 22 CFR 51.138 states that a person whose application for a passport has been tentatively denied shall be entitled "* * * to be informed of the evidence upon which the Passport Office relied as a basis for the tentative denial." The regulation does not say, nor is it contemplated, that the applicant is entitled to examine any adverse evidence or witnesses. To give the applicant such a right would, as Mr. Yeagley has stated in his letter of January 5, be to undermine the very security the act was designed to promote. If there is not sufficient disclosable evidence to support denial of a passport, the consequence would be that the applicant will receive a passport. In no case will he, or any other unauthorized person, be granted access to FBI files or sources.

2. In stating the requirement that the decision on a passport application may be made only on the open record, the regulations simply spell out the traditional requirement in Anglo-American jurisprudence that a person to be seriously injured by governmental action shall be entitled to face his accusers, and that the investigator or prosecutor shall not be the judge. See *Greene* v. *McElroy*, 360 496, 497 (1959). The Board of Passport Appeals will consist of senior Department officials outside the Passport Office who will have had no prior contact with the case and will thus, generally, have no knowledge about the applicant which they would have to forget. Hearing officers in the Passport Office will also be chosen among persons who have had no previous acquaintance with the applicant's case. There will thus be no "administrative brainwashing" at any level.

3. The inconsistency which you suggest is the result of the prohibition contained in section 6(b) of the act and the requirement of the new regulations for a decision only on evidence on the record is based upon a construction of the words "knowing or having reason to believe." In construing these words, the Department of Justice in the letter of January 5 previously referred to has stated that in cases in which security considerations dictate withholding of confidential security information from the record, "the Secretary of State can properly consider that he does not have the 'knowledge or reason to believe,' which the statute makes a condition for the requirement that he deny a passport."

4. As stated under 1 above, passport applicants will never be given access to FBI files and will be informed only of matters which the FBI or other originating agency agrees may be placed on the public record. This is in accordance with section 7(c) of Executive Order 10501 of November 9, 1953.

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It is true that there may be circumstances in which passports are issued to Communist applicants. If they use the passports, they are, of course, liable to criminal prosecution under section 6(a) of the act.

5. It is true that the Supreme Court has thus far reserved the question of whether the right of full confrontation is a constitutional requirement in passport cases. It is our judgment, however, and that of the Department of Justice, that the restriction on the right to travel contained in section 6 of the Subversive Activities Control Act is most likely to be sustained when accompanied by hearing procedures which themselves are not subject to serious question on constitutional grounds. We thus believe that the regulations are not favorable to the Communist Party, but on the contrary, will serve to strengthen the part of the Subversive Activities Control Act within the jurisdiction of the Department of State.

Moreover, as pointed out in the enclosed letter from Mr. Yeagley, a construction of section 6 of the Subversive Activities Control Act that did not call for a confrontation hearing would require an interpretation whereby the sanction of the passport sections were applied on a different basis from that applied to membership in an organization registered or required to be registered under section 7, it does not seem that a sound interpretation of the act should result in different kinds of hearings depending on whether the legal sanction to be imposed is registration or denial of a passport.

I do not believe that it is appropriate for us to comment on the remarks of the Administrator, Bureau of Security and Consular Affairs, in the previous administration. We do believe, however, that as officials of the executive branch we are bound to construe and administer the law in accordance with the advice of our law officers. This we have done in issuing the present regulations.

The problems discussed above and in your letter of January 16 are, plainly, not capable of easy solution. We trust that you will understand that we have given them. serious consideration, and we appreciate your continuing interest in them.

Respectfully,

FREDERICK G. DUTTON, *Assistant Secretary.*

Enclosure from Mr. J. Walter Yeagley.

Mr. SOURWINE. Miss Knight, did you have anything to do with preparing this letter?

Senator DODD. This is the Dutton letter?

Mr. SOURWINE. That is right.

Miss KNIGHT. I have never seen this letter before.

Mr. SOURWINE. Mr. Johnson, did you have anything to do with preparing this letter?

Mr. JOHNSON. No, sir. Absolutely not.

Mr. SOURWINE. Well, I can't examine you about the letter if you had nothing to do with preparing it.

Senator DODD. Have you ever seen it before?

Miss KNIGHT. No, sir, I have never seen the letter. I had no knowledge of it.

Senator DODD. Mr. Johnson.

Mr. JOHNSON. No, sir.

Mr. SOURWINE. I have analyzed this letter, Mr. Chairman. There are a number of questions I want to ask about it. Since Miss Knight is coming back, I think with the Chair's permission I will reserve these, and I will segregate them into those questions which concern the activity of the Passport Office generally, which she could answer, and the questions about the letter, and we will ask the letter questions of Mr. Chayes and Mr. Lowenfeld.

Senator DODD. Very well. Has that been put in the record?

Mr. SOURWINE. The letter itself has gone in the record. This is a copy which I am retaining. The original has gone to the reporter to go in the record.

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Miss KNIGHT. May I see the letter again, so we could identify it and I could get a copy of it.

Thank you.

Mr. SOURWINE. I now offer, Mr. Chairman, a copy of a press release issued by the office of Senate Mundt for morning papers of January 18.

Senator DODD. Very well.

(The material referred to reads as follows:)

[Press release from office of Senator Karl E. Mundt, Republican, of South Dakota, Washington, D.C., for release Thursday morning, Jan. 18, 1962]

Following is a copy of a letter Senator Karl E. Mundt, Republican, of South Dakota, is sending Wednesday, January 17, to Secretary of State Dean Rusk, concerning the new passport regulations issued by the Department of State. Senator Mundt's interest in these regulations stems from his work as a coauthor of the Internal Security Act of 1950 (the first 17 sections were initially presented as the Mundt-Nixon bill) which is to be implemented by these regulations. A similar letter is also being sent to Attorney General Robert Kennedy. The letter follows:

JANUARY 17, 1962.

Hon. DEAN RUSK,
Secretary of State,
Department of State, Washington, D.C.

DEAR MR. SECRETARY: This letter concerns the regulations recently promulgated by the Department of State, establishing the administrative procedures for the denial of U.S. passports to members of the Communist Party.

I have carefully studied these regulations as they appeared in the Federal Register for January 12, 1962, and I am obliged to state that I view their final adoption with grave concern. My concern centers on that portion of section 51.138, which provides that an applicant, who contests a tentative denial of a passport, shall be fully informed as to the sources of adverse evidence and granted the right to confront and cross-examine all adverse witnesses.

While I am fully aware of the infinite importance attaching to the coordinate rights of confrontation and cross-examination in criminal proceedings, under our Anglo-American legal system, I am, nevertheless, dubious as to the feasibility of making a strict transference of these rights to administrative proceedings, especially when national security is at issue. I am certain that many occasions will arise when the FBI, the CIA, and other intelligence agencies will understandably be strongly opposed to disclosing the identity of sensitively placed confidential informants; and if the testimony of these informants had determinative weight in the consideration of a passport application, the newly promulgated regulations will have the effect of compelling issuance of a passport to an individual, whom the Passport Office knows or has reason to believe is a member of the Communist Party. In matters involving our national security it is my earnest conviction that the Federal Government should not be compelled into the position of having to choose between two alternative courses of action, when both are inimical to our Nation's best interests.

This matter is further complicated by the fact that under the Internal Security Act of 1950 it is unlawful for any officer of the United States to issue a passport to an individual, whom that officer knows or has reason to believe is a member of an organization which is registered or under final orders to register in accordance with the registration requirements of that act.

It would seem that the newly promulgated regulations will place in an impossible legal circumstance those officers in the Department of State, who are responsible for passport issuance. Recognizing that the intelligence and investigative agencies will be unwilling to identify valuable confidential informants, will these State Department officers henceforth refuse to read confidential investigative reports for fear of gaining knowledge which might at some future date make it unlawful for them to approve the issuance of a U.S. passport? If this will be the result (and I do not see how such a result can be avoided under the new regulation) should we not then turn the responsibilities for passport issuance over to a room full of clerk-typists thus stripping away any and all pretense of a security system, which in fact will not exist?

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Had this strange and irreconcilable conflict between statute and regulation come about through inadvertence or honest mistake, my concern would be minimal. But since the regulations in question were specifically drafted to implement the statutory commands of the Internal Security Act of 1950, it must be assumed that this conflict is not the byproduct of haste or inadvertence but instead is the calculated end product of forethought and premeditation. As the coauthor of the first 17 sections of the Internal Security Act of 1950 (initially presented as the Mundt-Nixon bill) I view with grave concern the final adoption of these regulations, which render inoperable the passport security features of the act; and I, therefore, urgently request that you provide me with a detailed explanation of the legal reasoning which prompted the Department of State to issue these regulations in their present form.

Assuring you that your early attention in this matter will be deeply appreciated, and with warmest personal regards, I am,

Cordially yours,

KARL E. MUNDT, *U.S. Senator.*

Mr. SOURWINE. I now offer, Mr. Chairman, a copy of the bill, S. 2095, of the 86th Congress, and I want to explain that this bill introduced is referred to another committee than the Judiciary, but since the Judiciary Committee itself is free at any time to make legislative recommendations, either to the Senate or any of its sister committees, it seems to counsel proper that we might have in our record a text of the bill which represented an effort nearly 3 years ago to solve the problem of passport control from the security standpoint.

Senator DODD. Very well. Without objection.

(The material referred to reads as follows:)

[S. 2095, 86th Cong., 1st sess.]

A BILL To establish a United States Passport Service within the Department of State, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Passport Reorganization Act of 1959".

TITLE I—ESTABLISHMENT OF THE UNITED STATES PASSPORT SERVICE

SEC. 101. There is hereby established in the Department of State an agency to be known as the "United States Passport Service" which shall be headed by a Director who shall be appointed by the Secretary of State in accordance with the civil service laws, and whose position shall be allocated to grade 18 of the General Schedule as prescribed in the Classification Act of 1949, as amended. The Service shall be under the immediate jurisdiction of the Deputy Under Secretary of State for Administration.

SEC. 102. All functions, powers, duties, and authority of the Passport Office of the Bureau of Security and Consular Affairs, Department of State, together with those funds, liabilities, commitments, authorizations, allocations, personnel, properties, and records of the Department of State which the Secretary shall determine to be primarily related to and necessary for, the exercise of such functions, powers, duties, and authority, are hereby transferred to the Service.

SEC. 103. The Director of the Service may appoint passport agents within the United States and such appointments shall be under the civil service laws. Passport agents and such other officers and employees of the Service as may be designated in writing by the Director for that purpose may, in connection with their official duties, administer to or take from any person an oath, affirmation, affidavit, or deposition.

SEC. 104. The Service shall be responsible for the administration of laws and regulations relating to the nationality, protection, documentation, and control of international travel of nationals of the United States. The Service shall direct and coordinate the work of the Foreign Service in those fields.

SEC. 105. The Secretary shall administer the provisions of this Act through the Service; except that the functions vested in the Secretary by sections 208, 302(c), 304, and 402 shall not be delegated to any other person.

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TITLE II—PASSPORT ISSUANCE AND FEES

SEC. 201. The Secretary for and on behalf of the United States may grant, issue, renew, or revoke passports in the United States and cause passports to be issued, renewed, or revoked outside the United States by (1) diplomatic representatives of the United States, (2) such consuls general, consuls, or vice consuls when in charge, as the Secretary may designate, and (3) the chief or other executive officer of any Territory or possession of the United States.

SEC. 202. Before a passport is issued to any person by or under authority of the United States, such person shall subscribe to and submit a written application, duly verified by his oath or affirmation before a person authorized to take passport applications containing a true recital of each and every matter of fact which may be required by law or by any rules authorized by law to be stated as a prerequisite to the issuance of any such passport.

SEC. 203. There shall be collected and paid into the Treasury of the United States quarterly a fee of $2 for executing such application for a passport and $9 for each passport issued: *Provided*, That nothing contained herein shall be construed to limit the right of the Secretary by regulation to authorize the retention by State officials of the fee of $2 for executing an application for a passport. No fee shall be collected for passports issued to officers or employees of the United States proceeding abroad in the discharge of their official duties, or to members of their immediate families, accompanying or residing with them abroad, or to seamen or to air crewmen or to widows, children, parents, brothers, and sisters of American soldiers, sailors, or marines, buried abroad whose journey is undertaken for the purpose and with the intent of visiting the graves of such soldiers, sailors, or marines, which facts shall be made a part of the application for the passport.

SEC. 204. Whenever a fee is erroneously charged and paid for the issuance of a passport to a person who is exempted from the payment of such a fee by section 203 of this Act, the Department of the Treasury is authorized to refund to the person who paid such fee the amount thereof upon proper notice from the Service.?

SEC. 205. Whenever the appropriate officer within the United States of any foreign country refuses to visa a passport issued by the United States, and there is a request in writing accompanied by return of the unused passport within six months from the date of issue, the Department of the Treasury is authorized to refund to the person to whom the passport was issued the fee of $9 upon proper notice from the Service.

SEC. 206. All persons who shall be authorized to grant, issue, renew, or verify passports, shall make return of the same to the Secretary, in such manner and as often as he shall require. Such returns shall specify the names and all other particulars of the persons to whom the same shall be granted, issued, renewed, or verified, as embraced in such passports.

SEC. 207. The validity of a passport shall be limited to an initial period of three years. A passport may be renewed for an additional period of two years, upon the payment of a fee of $5. The final date of expiration of a passport, however, shall be not more than five years from the original date of issue.

SEC. 208. Notwithstanding any other provisions of this title, the Secretary may, under such regulations as he shall prescribe, provide for the issuance of special passports for the use of persons going abroad on official business for the Government of the United States.

SEC. 209. Except as otherwise provided by the Secretary and subject to such limitations and exceptions as the Secretary may authorize and prescribe, no national of the United States shall travel to or in a foreign country without a passport.

TITLE III—ELIGIBILITY FOR PASSPORT; TRAVEL LIMITATIONS

SEC. 301. Passports shall be granted and issued to nationals of the United States making proper application therefor who are not ineligible under the provisions of this title.

SEC. 302. (a) Except as otherwise provided in subsection (c), a passport shall not be granted and issued to—

(1) any person under indictment or information for a felony;

(2) any person owing money to the Government of the United States for previous transportation back to the United States;

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(3) any person under restraint pursuant to an order or decree entered by a Federal or State court of record;

(4) any person who is under subpena to appear before any Federal or State court, or before any congressional committee, or any committee of the legislature of any State;

(5) any person who is a member of the Communist Party or a member of any organization which has been finally ordered by the Subversive Activities Control Board to register, or has terminated such membership under such circumstances as to reasonably support the conclusion that he continues to act in furtherance of the interests and under the discipline of the Communist Party or such organization; or

(6) any person, not included in any of the foregoing categories, if there are reasonable grounds for believing that the travel abroad of such person or his activities abroad will violate the laws of the United States.

(b) For the purposes of paragraph (5) of subsection (a) of this section, the term "Communist Party" shall have the meaning ascribed to such term in section 4(b) of the Communist Control Act of 1954. For the purpose of determining membership of any person in the Communist Party consideration shall be given to the factors listed in section 5 of such Act.

(c) Notwithstanding any other provision of law, the Secretary may issue a passport to any person otherwise ineligible under this section if he shall determine that peculiar circumstances exist in the case of such person making such action consistent with the national interest. Such passport may be limited with respect to duration and areas for which it is valid.

SEC. 303. A passport may be revoked in any case where the holder thereof falls within one or more of the categories enumerated in section 302(a).

SEC. 304. (a) Whenever the Secretary shall determine that—

(1) hostilities are threatened or are occurring in any country or area; or

(2) the Government of the United States is unable to provide adequate protection to United States citizens traveling in any country or area; or

(3) citizens of the United States are being wrongfully detained in any country; or

(4) a limitation on travel of United States citizens in any country or area would serve as a deterrent to aggression; he may, in accordance with regulations prescribed by him, limit the validity of passport to places other than any country or area with respect to which such determination has been made.

(b) The Secretary may by regulation except from any general limitation on the travel of citizens in a particular country or area, prescribed under subsection (a), certain classes of persons whose vocations make such exception necessary or desirable in the national interest.

(c) No person who holds a passport, or is included in the passport of another, shall violate any regulation prescribed by the Secretary under this section.

TITLE IV—PROCEDURE FOR DENIAL OR REVOCATION OF PASSPORT AND REVIEW THEREOF

SEC. 401. Before any application for a passport shall be tentatively denied, the Director shall, within sixty days after receipt of the completed application, give notice in writing to the affected person setting forth clearly and concisely the reasons for the proposed denial. A hearing, upon request, shall be promptly granted before a hearing officer of the Service. At the hearing, which shall be informal, the person requesting the same shall be entitled to appear in person, be represented by counsel, offer oral or documentary evidence, examine all evidence which is part of the open record, and receive a copy of the transcript of the proceedings. At the conclusion of the hearing, the Director shall promptly decide, on the basis of the hearing record, whether or not the passport should be denied. The decision of the Director shall be forthwith communicated to the affected person in writing, and, if adverse, shall set forth the reasons therefor, and advise such person of his right to obtain a review of the decision by the Passport Review Board. If the decision is based in whole or in part on classified information a fair résumé of such information shall be made a part of the open record subject to the provision in Section 404 of this Act.

SEC. 402. (a) There is hereby established in the Department of State a Passport Review Board (hereinafter referred to as the "Board") which shall be composed of five members to be appointed by the Secretary. No person

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appointed to the Board shall be connected in any way with the Service. The Secretary shall, at the time of appointment, designate one member to serve as Chairman. The Board may, with the approval of the Secretary, appoint such clerical and technical assistants as it may require.

(b) Any person who has been denied a passport, after a hearing under section 401 may, within sixty days after notification of such denial, file with the Board a petition to review the decision resulting in such denial. Any petition duly filed hereunder shall be promptly granted by the Board and a time for a hearing of the matter shall be set at the earliest practicable date. Upon the granting of any such petition the Board shall notify all parties in interest of the time set for hearing, and upon receipt of such notice the Director shall cause the record upon which the order of denial was based to be filed with the Board.

(c) Proceedings before the Board shall be in accordance with regulations prescribed by the Board, with the approval of the Secretary, which regulations shall include the following requirements:

(1) The petitioner shall have the privilege of being represented by counsel.

(2) The petitioner shall have a reasonable opportunity to present all information relevant and material to his case, including testifying in his own behalf, presenting witnesses, and offering other evidence. If any witness whom the petitioner wishes to call is unable to appear personally, the Board may, in its discretion, accept an affidavit by him or order that his testimony be taken by deposition. Such deposition may be taken by any person designated by the Board and such designee shall be authorized to administer oaths for the purpose of any such deposition.

(3) A complete transcript shall be made of proceedings before the Board, and such transcript shall constitute a permanent part of the record of any such proceedings. Upon request the petitioner or his counsel shall be furnished a copy of the transcript and each witness shall have the right to inspect the transcript of his own testimony.

(4) Attendance at hearings before the Board shall be restricted to such persons as may be concerned with the case under consideration, including the petitioner, his counsel, the witnesses, and the official stenographers. Witnesses shall be present only while actually giving testimony.

(5) The petitioner may, at any time during the proceedings, address a request in writing to the Board for such additional information or explanation as may be necessary for the preparation of his case. The Board shall pass promptly and finally upon any such request and advise the petitioner of its decision.

(d) In proceedings under this section the Board may administer oaths, present and receive evidence, and interrogate, examine, and cross-examine the petitioner or witnesses. It shall be the duty of the Board to assure the petitioner of a complete and fair consideration of his case. In determining whether there is substantial evidence supporting the denial or revocation of a passport, the Board shall consider the entire record and such information of the type described in section 404 of this title as it may have received. The Board shall take into consideration the inability of the petitioner to challenge information of which he has not been advised in full or in detail, or to attack the credibility of information which has not been disclosed to him. Formal rules of evidence shall not apply in proceedings under this section; except that reasonable restrictions shall be imposed by the Board as to the relevancy, competency, and materiality of evidence introduced in the proceedings.

(e) Upon the conclusion of a proceeding under this section, the Board shall transmit its findings and recommendations to the Secretary. Upon the basis of such findings and recommendations, and after review of the entire record, the Secretary shall affirm or reverse the action resulting in the denial or revocation of passport. The decision of the Secretary shall be final and the petitioner shall be promptly notified in writing.

(f) The United States District Court for the District of Columbia shall have jurisdiction to review any final determination of the Secretary of State under this title to determine whether there has been compliance with the provisions of this Act and of any regulations issued thereunder. In any such proceedings the court shall have power to determine whether any findings which are stated to be based upon the open record are supported by the evidence contained in that record, or,

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in the case of a résumé of evidence which was not made a part of the open record in conformity with section 401 of this title, are supported by the résumé of such evidence.

SEC. 403. Except for action taken by reason of non-citizenship or action taken under the provisions of Section 304 of this Act, the provisions of section 401 and 402 shall apply in any case where the person affected takes issue with the action of the Secretary in granting, issuing, limiting, extending, renewing, or revoking, or in any other fashion or degree affecting the ability of such person to receive or use a passport.

SEC. 404. Nothing contained in his title shall require the disclosure of information affecting the national security, or of investigative sources or methods.

TITLE V—AMENDMENTS TO TITLE 18, UNITED STATES CODE

SEC. 501. (a) Chapter 75 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 1547. Travel without passport or in countries in which passport is not valid; failure to surrender passport

"Whoever, being required by law to have a passport issued under the authority of the United States for the purpose of travel in or to a foreign country, shall knowingly (1) travel in or to such country without a passport duly issued under such authority, or (2) travel in or to a country with respect to which such passport is not valid; or

"Whoever, holding a passport issued under the authority of the United States which has been tentatively or finally revoked, shall refuse upon proper demand to surrender the same—

"Shall be fined not more than $1,000 or imprisoned not more than one year, or both."

(b) The analysis to chapter 75 of title 18, United States Code, is amended by adding at the end thereof a new item as follows:

"1547. Travel without passport or in countries in which passport is not valid; failure to surrender passport."

TITLE VI—LAWS REPEALED: EFFECTIVE DATE

SEC. 601. (a) The following Acts or parts of Acts and all amendments thereto are repealed:

(1) Sections 1, 2, and 3 of the Act of July 3, 1926 (22 U.S.C. 211a, 217a, 214a).

(2) Sections 1, 2, and 4 of the Act of June 4, 1920 (22 U.S.C. 214, 215, 216).

(3) Section 1 of title IX of the Act of June 15, 1917 (22 U.S.C. 213).

(4) Sections 4076 and 4077 of the Revised Statutes (22 U.S.C. 212, 218).

(b) All other laws, or parts of laws, in conflict or inconsistent with this Act are, to the extent of such conflict or inconsistency, repealed.

SEC. 602. This Act shall take effect on the sixtieth day after the date of its enactment.

TITLE VII—DEFINITIONS

SEC. 701. As used in this Act, the term—

(1) "Director" means the Director of the United States Passport Service, established pursuant to section 101 of this Act;

(2) "Service" means the United States Passport Service;

(3) "Secretary" means the Secretary of State;

(4) "Passport" means the document which is issued by the Government of the United States to a national of the United States, for the purpose of (A) identifying the bearer and his nationality, (B) indicating that the bearer is entitled to receive the protection and good offices of the American diplomatic and consular officers in those countries abroad in which the bearer proposes to travel or sojourn, and (C) requesting that the officials of such countries permit the bearer to travel or sojourn in their territories and, in case of need, to give him all lawful aid and protection; and

(5) "National of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States owes permanent allegiance to the United States.

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Mr. SOURWINE. Similarly, an effort this year—I offer for the record the bill H.R. 9754, introduced by Congressman Francis Walter, January 18, 1962, and his press release issued in connection therewith.

Senator DODD. Very well. Without objection.

(The material referred to reads as follows:)

STATEMENT BY CONGRESSMAN FRANCIS E. WALTER, CHAIRMAN, HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES, JANUARY 18, 1962

I introduced today a bill spelling out a review procedure under which the Department of State may consider appeals from rulings under which passports are denied to Communists and members of Communist organizations pursuant to section 6 of the Internal Security Act of 1950. Since the Supreme Court of the United States rendered its decision in the *Communist Party* case on June 5, 1961, that law is in effect.

The urgent need for this legislation is stressed by the fact that the Department of State, without consultation with appropriate committees of the Congress, has seen fit to issue, on January 12, 1962, regulations nullifying the law and facing the Government of the United States with the problem of either permitting the Communists and their attorneys to rifle freely the confidential files of the FBI, the CIA, and other investigative agencies, or to obtain passports notwithstanding the prohibition now in effect. The Committee on Un-American Activities recommends in this instance that the Congress shall lay down a procedure, which the Department of State has neglected to do, implementing the statutes as written by Congress and now in force.

My bill specifically requires the applicant seeking a passport to submit a written application under oath with respect to his membership in such Communist organizations as specified in section 6, subsection (a) of the Internal Security Act. This in fact amounts to nothing more than a restatement of existing law in force under the act of June 15, 1917 (22, U.S.C. 213), but which the Department of State has deliberately ignored, and in effect annulled, in its regulations recently promulgated.

Under this bill, an applicant who is refused a passport for reasons other than that he failed to submit the sworn statement above referred to, will be able to file a motion for review and be heard by a special review officer, who is prohibited from having participated in investigative functions or in any proceedings connected with the original refusal of a passport to the person requesting review. The applicant will be entitled to submit evidence pertinent to the matter and appear at hearings, accompanied by counsel if he so desires, and receive such additional information or explanation as may be necessary for the preparation of his case before the special review officer. Moreover, all review proceedings will be conducted in such manner as to protect from disclosure all information affecting the national security, safety, and public interest, or tending to compromise investigative sources and methods.

A special review officer who conducts the hearing will not be entitled to make the decision as to the issuance or refusal of a passport. Instead the bill imposes upon him the duty promptly to submit his recommendation to the Secretary of State, whose decision will be final.

[H.R. 9754, 87th Cong., 2d sess.]

A BILL To amend section 6, title I, of the Internal Security Act of 1950, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6, title I, of the Internal Security Act of 1950, as amended, is hereby amended by adding the following:

"(c) As used in this subsection—

"(1) The term 'applicant' means a person who has made application for a passport in accordance with section 1 of title IX of the Act of June 15, 1917 (22 U.S.C. 213).

"(2) The term 'special review officer' means any officer of the Department of State whom the Secretary of State deems specifically qualified to conduct proceedings, prescribed by this subsection and who is selected and designated by the Secretary of State, individually or by regulation, to conduct such proceedings. Such special review officer shall be subject to such supervision and shall perform such duties, not inconsistent with this section, as the Secretary of State shall prescribe.

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"(3) Before any passport is issued or renewed to any person, the Secretary of State shall, in the application therefor, require such person to subscribe, under oath or affirmation, to a statement with respect to his membership in such Communist organizations as specified in subsection (a). Should such person fail or refuse to subscribe to such statement, the application for such passport or renewal thereof shall, by reason thereof, be denied forthwith without further proceedings or review. It shall be unlawful for any officer or employee of the United States to issue or renew a passport in the absence of such statement.

"(4) Any applicant who, for reasons other than that he has failed or refused to subscribe to the statement required in paragraph (3) preceding, has been refused a passport or the renewal or extension thereof, or has a passport withdrawn, canceled, or revoked, or has a passport restricted or limited, except in a manner applicable to all applicants, may within six months after notification of such action by the Secretary of State submit to the Secretary of State a motion in writing for a review before a special review officer, and any such applicant shall be advised of his right to make such motion.

"(5) It shall be the duty of the Secretary of State to refer any motion for a review made under paragraph (4) of this subsection to a special review officer. In any case in which the Secretary of State believes that such procedure would be of aid in making a determination, he may direct, specifically or by regulation, that an additional officer of the Department of State shall be assigned to present the evidence on behalf of the Government, and in such case such additional officer shall have authority to present evidence, and to interrogate, examine, and cross-examine the applicant or the witnesses. Nothing in the preceding sentence shall be construed to diminish the authority conferred upon the special review officer conducting proceedings under this subsection.

"(6) A special review officer shall conduct proceedings under this subsection for the purpose of submitting to the Secretary of State a recommendation as to what action should be taken upon the passport application under review. The special review officer shall communicate his recommendation to the Secretary of State with the least possible delay and the decision of the Secretary of State shall be final. Such decision shall be notified to the applicant by the Secretary of State in writing.

"(7) No special review officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated in the original refusal to issue, renew, or extend a passport, or in the original action of withdrawal, cancellation, revocation, limitation, or restriction of a passport. All testimony shall be given under oath or affirmation. The special review officer may administer oaths, present and receive evidence, interrogate, examine, and cross-examine the applicant or witness.

"(8) Proceedings before a special review officer acting under the provisions of this subsection shall be in accordance with such regulations, not inconsistent with this section, as the Secretary of State shall prescribe, which regulations shall include requirements that—

"(A) the applicant shall be given notice, reasonable under all the circumstances, of the reasons for the original action taken on his application and of the time at which the proceedings will be held;

"(B) the applicant shall have the privilege of being advised, assisted, or represented (at no expense to the Government) by counsel;

"(C) the applicant shall have a reasonable opportunity to present all information relevant and material to the formulation of the special review officer's recommendation in his case. The applicant may address a request in writing to the special review officer for such additional information or explanation as may be necessary for the preparation of the hearing before the special review officer. The special review officer shall pass promptly and finally upon such request and advise the applicant of his decision;

"(D) the applicant may testify in his own behalf, present witnesses, and offer other evidence. If any witness whom the applicant wishes to call is unable to appear personally, the special review officer may, in his discretion, accept an affidavit by him or order that his testimony be taken by deposition. Such deposition may be taken by any person designated by the special review officer and such designee shall be authorized to administer oaths for the purpose of the depositions;

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"(E) a complete verbatim stenographic transcript shall be made of proceedings conducted under this section by qualified reporters, and such transcript shall constitute a permanent part of the record. Upon request the applicant or his counsel shall have the right to inspect the transcript of his own testimony; and

(F) attendance at hearings under this section shall be restricted to such officers of the Department of State as may be concerned with the case under consideration, the applicant, his counsel, the witnesses, and the official stenographers. Witnesses shall be present at the hearing only while actually giving testimony.

"(9 Proceedings under this subsection shall be conducted in such a manner as to protect from disclosure all information affecting the national security, safety, and public interest, or tending to compromise investigative sources or investigative methods.

"(10) The files maintained by the Department of State and any other pertinent Government files submitted to the special review officer shall be considered as part of the evidence in each case without testimony or a ruling as to admissibility. Such files may not be examined by the applicant.

"(11) It shall be the duty of the special review officer to insure the applicant of complete and fair consideration of his case. In making his recommendation the special review officer shall consider the entire record, including the transcript of the proceedings and such confidential information as he may have received. The special review officer shall take into consideration the inability of the applicant to challenge information of which he has not been advised in full or in detail, or to attack the creditability of information which has not been disclosed to him. Formal rules of evidence shall not apply in proceedings under this section except that reasonable restrictions shall be imposed by the special review officer as to the relevancy, competency, and materiality of evidence introduced in the proceedings.

"(12) Notwithstanding the provisions of any other law, the procedure prescribed in this subsection shall be the sole and exclusive procedure for the review of the refusal to issue, renew, or extend a passport, or of the withdrawal, cancellation, restriction, limitation, or revocation of a passport, under this section.

"(13) An indictment for any violation of any of the provisions of this section and sections 1001 and 1542 of title 18, United States Code may be found at any time within ten years next after such violation shall have been committed."

Mr. SOURWINE. This will give the committee a full picture of efforts to solve this problem.

Now, this is a column from the Daily News of Washington, D.C., of January 23, 1962, the column being entitled "The World Today." It contains a single paragraph referring to the revocation of passports by the State Department. I offer this for the record, Mr. Chairman.

Senator DODD. Very well.

(The material referred to reads as follows:)

[From the Washington Daily News, Jan. 23, 1962]

THE WORLD TODAY

* * * * * * *

The State Department revoked passports of several top members of the U.S. Communist Party, including Elizabeth Gurley Flynn, the national chairman, and James E. Jackson, editor of The Worker.

Mr. SOURWINE. Miss Knight, you note the statement in that column that the Department had revoked the passports of several top Communists. Is that statement true?

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. Whose passports were revoked?

Miss KNIGHT. Elizabeth—we tried to revoke the passport of Elizabeth Gurley Flynn.

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Mr. SOURWINE. When did you try to revoke that passport?

Miss KNIGHT. On November 1, the Passport Office requested the INS to withdraw the passport of Elizabeth Gurley Flynn, since information given us reflected her return from Moscow on November 4 or November 5 of 1961.

Mr. SOURWINE. What is that paper from which you are reading?

Miss KNIGHT. This is the chronological documentation of actions which you put into the record. I have all my copies right there. I was surprised when you showed me a copy.

Mr. SOURWINE. Well, Miss Knight, if you will look back at the document I showed you, you will find, I believe, that it is neither as long nor as comprehensive as this one. Do you have any objection to having this document put in our record?

Miss KNIGHT. No, sir. This one, I just brought up to date in the last few days.

Mr. SOURWINE. May this go in our record at this point?

Miss KNIGHT. I have no objection.

Mr. SOURWINE. If you have no objection, Mr. Chairman, I offer this for the record.

Senator DODD. Very well.

(The material referred to reads as follows:)

PASSPORTS AND COMMUNISTS

The following is the chronology of actions taken by the Passport Office following the Supreme Court decision of June 5, 1961, upholding the constitutionality of section 7 of the Subversive Activities Control Act of 1950 (50 U.S.C. 781 et seq.):

June 5, 1961: Passport Office issued internal memorandum to withhold action on applications submitted by individuals where there is information reflecting present or recent past (5 years) Communist Party membership.

June 12, 1961: Passport Office sent memo to Acting Legal Adviser Mr. Meeker, through S.C.A., outlining pertinent portions of the Internal Security Act (section 6 in particular) requesting views as to what action should be taken with respect to (1) pending applications from Communist Party members, (2) those Communist Party members who have passports, and (3) what actions and what procedures should be followed when law (section 6) becomes operative.

June 14, 1961: Airgram (CG–1032) to all American diplomatic and consular posts, advising of Supreme Court decision, provisions of the law and directing all applications from individuals within purview of the law to be sent to Department.

June 22, 1961: Memo from L. to PPT advising that when law becomes effective PPT will be prohibited by penal sanctions to issue passports to Communist Party members; advising there was no statutory basis for withdrawing outstanding passports and to process application just like the application from any other applicant.

June 27, 1961: PPT advised (by Legal Adviser's Office) by telephone that Justice Frankfurter had granted stay on Communist Party petition for rehearing.

June 27, 1961: Internal instructions issued advising of Supreme Court stay and to continue recording procedures placed in effect on June 5, 1961.

July 18, 1961: Airgram to all diplomatic and consular posts to process applications same manner as prior to June 5, 1961.

October 9, 1961: Supreme Court dismisses Communist Party petition for a rehearing on its June 5, 1961, decision.

October 10, 1961: Passport Office issued a memorandum alerting personnel that all passport and renewal applications of persons within the purview of statute must be intercepted prior to any issuance and/or renewal as the case may be. All cases to be referred to the Legal Division of the Passport Office for handling.

October 10, 1961: Passport Office sent airgram to all American diplomatic and consular posts advising of Supreme Court's dismissal of petition for rehearing and directing that applications from all persons within purview of law be forwarded to Department (Passport Office).

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October 10, 1961: PPT advised SCA (confirming oral information of October 9, 1961) of internal procedures for handling applications—advising our views that criminal act attaches as soon as individual applies for or uses passport.

October 11, 1961: PPT advises chief executive officers, Puerto Rico, Guam, Virgin Islands, and American Samoa of Supreme Court action, provisions of law, etc.

October 24, 1961: PPT sent letter to Mr. J. Walter Yeagley, Assistant Attorney General, Internal Security Division, Department of Justice (through legal adviser) requesting views as to what action should be taken re withdrawal of passport from Communist Party members (mentioning Flynn and Jackson—delegates to CPUSSR Congress).

October 25, 1961: PPT answered in detail Mr. Yeagley's telephone request concerning PPT hearing procedures. He was also furnished statistics regarding number of passports issued to persons subsequent to June 16, 1958 (*Kent-Brichl* decision), who, on the basis of FBI information, are Communist Party members or Communist Party members within recent past (5 years prior to passport application).

November 1, 1961: PPT requested I. & N.S. to withdraw passport of Elizabeth Gurley Flynn—FBI information reflected her return from Moscow on November 4 or 5, 1961. Mr. Maroney, Internal Security Division, Department of Justice, advised.

November 3, 1961: PPT advised by Mr. Chayes and Mr. Yingling (during conference re passport legislation) that PPT had no authority to withdraw Flynn passport—matter solely for Department of Justice.

Novemehr 3, 1961: PPT countermanded requested to I. & N.S. in Flynn matter. FBI and Justice advised.

November 16, 1961: P. P. T. drafted for SCA—Bontempo signature—reply to letter dated November 9, 1961, from Congressman Walter to Secretary regarding HCUA interest in section 6, Internal Security Act. Reply stated internal procedures and close liaison being maintained with Department of Justice.

November 16, 1961: P. P. T. (Mr. Seeley) advised by Mr. Yingling (L) re meeting held November 15, 1961, at Department of Justice, which lasted for several hours. No decision reached but withdrawal of passports held by Communist Party members might provoke court test of constitutionality of section 6. Mr. Yingling requested list be prepared.

November 28, 1961: P. P. T. representative (Mr. Johnson) attended meeting with Mr. Yingling, legal adviser's office, re passport renewal application of Abraham Magil (Communist Party member) filed on October 20, 1961, date SACB order became final. No definite decision other than write Mr. Magil, advising him of law, and asking if he wished to pursue application.

November 30, 1961: Passport Office sent memorandum to Mr. Abram Chayes, transmitting two lists of persons who appear to be within the purview of 50 U.S.C. 785. The lists were compiled from the records of the Passport Office.

December 1, 1961: Passport Office sent a memorandum to Mr. Abram Chayes, recommending the withdrawal of passports issued to individuals on the national levels of the Communist Party leadership, recommending the issuing of appropriate letters to such individuals concerned, notifying them of the tentative withdrawal of their passports and affording them a hearing and right to appeal.

December 4, 1961: Passport Office sends letter to Mr. Magil re passport application (see November 28, 1961, above).

December 7, 1961: Passport Office sent a memorandum to Mr. Abram Chayes recommending that the following statement be placed in all passport application forms, registration forms, agency notices, etc.:

"Section 6 of the Internal Security Act of 1950 (50 U.S.C. 785) provides a severe penalty (fine and/or imprisonment) for a member of the Communist Party of the United States who applies for a passport or for the renewal of a passport or who uses or attempts to use a passport."

December 7, 1961: Meeting in legal adviser's office. Mr. Abram Chayes reviewed his conversations with the Department of Justice attorneys. Mr. Chayes advised Miss Knight of the Secretary's interest in not withdrawing passports but in having the statute enforced by means of criminal prosecutions in due course.

It was agreed that the Passport Office prepare a letter for Mr. Chayes' signature transmitting to Assistant Attorney General Yeagley for use in enforcement of the act, a list of persons holding valid passports who, on the basis of information supplied the Department by the FBI, appear to be within the purview of section 6 of the act.

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Mr. Chayes also advised that he would soon assign someone to check the passport regulations and was informed by Miss Knight that a complete revision of the Executive order and the Secretary's regulations on the issuance of passports had been made by the Passport Office and had been held in abeyance for over a year pending some action either by the Department or legislative branch. It was agreed that the revisions be checked and brought up to date by the Passport Office. Mr. Chayes agreed to review the Passport Office presentation as a matter of urgency.

December 11, 1961: P. P. T. sent two copies lists A and B (persons within sec. 785) to Mr. Yeagley under Mr. Chayes' signature.

December 12, 1961: P. P. T. advised Mr. Yeagley that Mr. Magil asked that renewal application be withdrawn. Mr. Yeagley requested to advise P. P. T. what criminal action, if any, would be taken. Refund of $5 renewal fee would be held awaiting reply.

December 15, 1961: Mr. Chayes cleared the proposed warnings to be inserted in Passport Office forms and a printing order was processed immediately by the Passport Office. New placards, cards, signs, and forms were among the documents to have the warning inserted.

December 15, 1961: Passport Office sent a memorandum to Mr. Abram Chayes transmitting an original and one copy of the draft of a new Executive order and rules and regulations by the Secretary which are to supersede Executive Order No. 7856 issued on April 2, 1938, and regulations issued pursuant thereto at intervals since April 2, 1938.

December 28, 1961: Meeting in the legal adviser's office with Mr. Meeker and Mr. Lowenfeld regarding the immediate issuance of revised regulations dealing with the denial of passports to Communists.

It was decided that sections 51.135 through 51.170 of the regulations on issuance of passports be reviewed and revised prior to the completion of a comprehensive study of passport regulations and the Executive order of 1938.

Mr. SOURWINE. On what page is the item——

Miss KNIGHT. Page 2. The third from the bottom.

Mr. SOURWINE. Well, that doesn't——

Miss KNIGHT. You will notice that on November 1, 1961, the Passport Office requested INS to withdraw the passport of Elizabeth Gurley Flynn.

Mr. SOURWINE. But it never was withdrawn, was it?

Miss KNIGHT. No, sir.

Mr. SOURWINE. Well, then——

Miss KNIGHT. Because we were advised by the legal adviser's office that the Passport Office had no authority to withdraw the Flynn passport.

Mr. SOURWINE. Well, then, the story—do you have that little clipping I just showed?

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. The story in the Washington Daily News which says:

State Department revokes passports of several top members of the Communist Party, including Elizabeth Gurley Flynn, the national chairman, and James E. Jackson—

that is wrong, isn't it? The passports had not, in fact, been revoked.

Miss KNIGHT. In fact, they had not been revoked.

Mr. SOURWINE. Either at this time or in November when you tried to do it.

Miss KNIGHT. We tried to.

Mr. SOURWINE. Did you ever try to revoke the passport of James E. Jackson?

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Mr. JOHNSON. May I answer that? We sent letters to Elizabeth Gurley Flynn and to James Jackson, Arnold Johnson, and two others—Aptheker, and I can't think of the other name—five of them.

Mr. SOURWINE. When?

Mr. JOHNSON. I believe it was around January 22, sir.

Mr. SOURWINE. Is this listed in your chronology, Miss Knight?

Miss KNIGHT. I don't believe this is listed.

Mr. SOURWINE. This chronology ends with 1961. Do you have a chronology of actions in 1962?

Miss KNIGHT. Yes, I think Mr. Johnson has that.

Mr. SOURWINE. While you are looking to see, I have two other items I want to offer for the record. May I do that now, Mr. Chairman?

Senator DODD. Yes.

Mr. SOURWINE. This is first a story from the St. Louis, Mo., Globe-Democrat, of April 30, 1962, entitled "Passport for Reds." And then a clipping from the Washington Post of April 24, 1962, entitled "Showdown of Flynn Passport Bid Balked." May those go in the record?

Senator DODD. Yes, without objection.

(The material referred to reads as follows:)

[From the St. Louis (Mo.) Globe-Democrat, Apr. 30, 1962]

PASSPORT FOR REDS?

Believe it or not, but Elizabeth Gurley Flynn, who was long an open and avowed member of the Communist Party, may get a U.S. passport, after all.

Last year, the Supreme Court ruled these vital safe-conduct passes could be denied to Red party members. This decision was hailed by many concerned with the Nation's security.

The decree meant, for example, that Washington could stop known Communist couriers from going abroad to transmit information—or pick up funds to finance espionage in this country.

It also meant Communist Party bigwigs could no longer smear their country overseas, by taking part in anti-American propaganda circuses staged here by the Soviet Union.

But where the Supreme Court giveth, the State Department taketh away.

Last January, the Department unveiled a new set of rules that must be followed before it will deny an American Communist a passport.

First, the burden of proof of party membership is on Washington. The FBI or other agencies involved must produce witnesses who can identify the passport applicant as a party member. He and his lawyer must also have the right to cross-examine these witnesses. Washington must produce any evidence that shows party membership for his examination.

This is mandatory, no matter how confidential the material or its source. If it is classified information which cannot be disclosed to unauthorized persons, the evidence can't be used.

Worst still, even airtight proof of past Communist Party membership isn't enough. The applicant can say he has resigned from the party. It is up to Washington to prove otherwise.

When these rules were made public, the American Civil Liberties Union shouted with joy. This is the first time in history, the ACLU pointed out, that the right "to confront and cross-examine" has been made a part of the "Government's loyalty-security programs."

It said it would urge other Government agencies to follow the State Department's example.

Mrs. Flynn has applied for a passport to go abroad. Last week, a hearing was held to show cause for denying it. But the redtape which the State Department has wound about such passport cases immediately brought the proceedings to a halt.

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A major witness failed to appear. Why? Perhaps out of fear of the abuse the Communist Party and its friends might heap on him. Perhaps out of fear of bodily harm from one of the many plug-uglies and hired assassins on the party's payroll.

Mrs. Flynn's hearing was postponed until May 3. Unless the missing witness can be rounded up, it will be bon voyage for "Lizzy," another great victory for civil liberties, and one more black day for the United States.

[From the Washington Post, Apr. 24, 1962]

SHOWDOWN OF FLYNN PASSPORT BID BALKED

(Associated Press)

The State Department's attempts to deny a U.S. passport to Elizabeth Gurley Flynn ran into trouble yesterday when a major witness failed to show up.

As a result, the Department got a continuance until May 3 in the first-of-its-kind hearing on Mrs. Flynn, listed by the Department of Justice as chairman of the Communist Party of the U.S.A.

Officials said the State Department had been severely hampered by lack of legal power to subpena and pay expenses of witnesses in the newly created passport-revocation procedures.

The Flynn hearing, which started yesterday, is the first under a new and controversial regulation issued by the State Department after the Supreme Court upheld the passport provisions of the Subversive Activities Control Act. The act makes it unlawful for a Communist Party member to apply for a passport, or for renewal of a passport, or to use a passport.

Mr. SOURWINE. I also offer a copy of the Department of State press release, No. 264, of April 23, 1962, regarding hearings in the passport revocation case of Elizabeth Gurley Flynn.

Senator DODD. Very well.

(The material referred to reads as follows:)

[Department of State press release No. 264, Apr. 23, 1962]

The Department of State will begin hearings tomorrow in the passport revocation case of Mrs. Elizabeth Gurley Flynn. Mrs. Flynn's passport was revoked by authority of the Secretary of State on January 22, 1962, on the ground that there was reason to believe she was a member of the Communist Party of the United States, an organization required to register with the Attorney General under the Subversive Activities Control Act of 1950.

The case is the first one to arise since the passport provisions of the Subversive Activities Control Act went into effect. The provisions became effective following the entry of judgment by the Supreme Court in the case of *Subversive Activities Control Board* v. *Communist Party of the United States.*

Under the provisions of section 6 of the Subversive Activities Control Act, it is now unlawful for a member of the Communist Party of the United States to apply for a passport or for the renewal of a passport or to use a passport.

The hearing will take place before a hearing officer, and will be held in the hearing room of the Passport Office. The hearing officer will be Mr. Max Kane, a hearing examiner for the Federal Power Commission, who has been assigned to this case by arrangement with the Civil Service Commission.

For the protection of persons suspected of Communist Party membership, the regulations require that hearings be private. The Passport Office and the applicant will be represented by counsel, and a transcript will be made of the proceedings.

The recommended decision of the hearing officer will be based only on evidence presented at the hearing, and will not be based on any confidential information.

The hearing officer will prepare findings of fact and will make a recommended decision to the Director of the Passport Office. In the event of an adverse decision, the applicant will have the right to appeal to the Board of Passport Appeals, which has been appointed by the Secretary of State.

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Mr. SOURWINE. Do you have that chronology, Miss Knight?

Miss KNIGHT. It is not prepared in exactly the same manner as the other, but it gives the information you are requesting.

Mr. SOURWINE. Whatever form it is, may we have it for the committee record?

Miss KNIGHT. Yes, sir.

Mr. SOURWINE. This is prepared by you, Mr. Johnson?

Mr. JOHNSON. Yes, sir.

Mr. SOURWINE. All right.

(The material referred to reads as follows:)

BACKGROUND OF ACTION TAKEN UNDER INTERNAL SECURITY ACT OF 1950

(1) Supreme Court's decision of June 5, 1961, in the case of the *Subversive Activities Control Board* v. *The Communist Party, U.S.A.*, requiring the Communist Party, U.S.A., to register as a Communist action organization under section 7 of the Internal Security Act of 1950.

(2) The Supreme Court granted a stay of judgment pending their decision on a petition for a rehearing filed by the Communist Party. The petition was dismissed on October 9, 1961, making the Subversive Activities Control Board's order final within the statutory period.

(3) Notice of fact that Subversive Activities Control Board's order requiring Communist Party to register had become final which appeared in the October 21, 1961, issue of the Federal Register.

(4) The finality of the Subversive Activities Control Board's order on October 20, 1961, automatically triggered the provisions of section 6 of the Internal Security Act of 1950 (50 U.S.C. 785) concerning the issuance of passports to Communists.

(5) Letter to Mr. J. Walter Yeagley, Assistant Attorney General from Mr. Hickey dated October 24, 1961, requesting the Department of Justice's views with respect to what passport action we should take in the cases of Elizabeth Gurley Flynn and James Edward Jackson who were returning to the United States after attending the 22d congress of the Communist Party of Soviet Union and further requesting their views with respect to action to be taken on applications for passport submitted on or after October 20, 1961.

(6) Memo to L. Mr. Chayes from Miss Knight dated December 1, 1961, recommending withdrawal of the passports of Communist Party functionaries at national level.

(7) Memo of conversation between Mr. Chayes and Miss Knight dated December 7, 1961 (prepared in L) setting forth Secretary's interest in not withdrawing passports but in having statute enforced by means of criminal prosecutions.

(8) Letter from J. Walter Yeagley, Assistant Attorney General, to Mr. Roger Jones, Deputy Under Secretary, dated January 5, 1962, expressing Justice's view that the Department does not have "reason to believe" under section 6 of the Internal Security Act of 1950 when such "reason to believe" is based on classified information. Also expresses view that Department must conduct hearings in passport denials affording full confrontation to the applicant.

(9) Letter from Yeagley to Mr. Jones, dated January 5, 1962 (second letter of that date), setting forth generally the Department of Justice's views as to the procedures for the Department to follow in handling cases under section 6.

(10) A decision was reached to withdraw passports of national functionaries of the Communist Party, U.S.A. (after consultation with L and Department of Justice).

(11) Memo from L. Mr. Chayes to Miss Knight, dated January 19, 1962, directing revocation of the passports of William Albertson, Herbert Aptheker, Elizabeth Gurley Flynn, James Edward Jackson, and Arnold Samuel Johnson (draft of letter prepared by L). This action was in accordance with L's recommendation in memorandum for the Secretary dated January 8, 1962, as modified by direction of the Secretary. (Names selected and summary of information available were reviewed by Department of Justice.)

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(12) Revocation letters were mailed to the five Communist Party functionaries enumerated in item 11, on January 22, 1962.

(13) Memo from Edward J. Hickey, Acting Director, Passport Office, to L, Mr. Chayes dated January 29, 1962, forwarding, for L's clearance, revocation letters addressed to Dorothy H. Connelly, Albert J. Lima, George A. Meyers, Thomas Nabried, and Louis Weinstock.

(14) Memo from L, Mr. Chayes to Mr. Hickey, dated February 6, 1962, advising that Department of Justice had recommended withholding revocation of passports of the Communist Party functionaries enumerated in item 13 pending indication of the reaction of the first group of Communist Party functionaries whose passports had been revoked. L concurred in Department of Justice's recommendations.

(15) A hearing in the case of Elizabeth Gurley Flynn was held on April 24, 1962, and concluded on May 3, 1962. It is presently in the hands of the hearing examiner for recommended decision.

(The subcommittee subsequently received the following letter:)

DEPARTMENT OF STATE,
Washington, May 18, 1962.

Mr. JULIEN G. SOURWINE,
Chief Counsel, Senate Internal Security Subcommittee,
New Senate Office Building, Washington, D.C.

DEAR MR. SOURWINE: I am enclosing herewith a paper presenting a chronological listing of the actions taken by the Passport Office following the Supreme Court decision of June 5, 1961, upholding the constitutionality of section 7 of the Subversive Activities Control Act of 1950.

I had an incomplete list of these actions with me at the hearings held on Wednesday and you will remember that you requested it, and I believe it was made part of the record. Then you noticed that this earlier list only covered the actions taken to the end of December 1961, and Mr. Johnson provided a paper which was more or less informal, listing subsequent actions. When I returned to the office I compared these papers with my files, and I feel that there are a few references to conversations and opinions expressed in some intra-office conferences within the Department which could be omitted without destroying the value of the chronological listing. Also, I believe the paper Mr. Johnson referred to and which was made part of the record is more valuable when translated into the chronological listing and added to it in the same style.

This is only a suggestion, but I do believe the enclosed document is better prepared and can be better understood than the two incomplete documents which are now in the record. For the sake of posterity, is there any chance of substituting this better and more complete documentation for the other two?

With best wishes.

Sincerely,

FRANCES G. KNIGHT,
Director, Passport Office.

Enclosures.

CHRONOLOGY JUNE 5, 1961 TO JANUARY 12, 1962

The following is the chronology of actions taken by the Passport Office following the Supreme Court decision of June 5, 1961 upholding the constitutionality of section 7 of the Subversive Activities Control Act of 1950 (50 U.S.C. 781 et seq.):

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June 12, 1961: Passport Office sent memo to Acting Legal Adviser, Mr. Meeker, through SCA outlining pertinent portions of the Internal Security Act. (sec. 6 in particular) requesting views as to what action should be taken with respect to (1) pending applications from Communist Party members, (2) those Communist Party members who have passports, and (3) what actions and what procedures should be followed when law (sec. 6) becomes operative.

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October 9, 1961: Supreme Court dismisses Communist Party petition for a rehearing on its June 5, 1961 decision.

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October 24, 1961: PPT sent letter to Mr. J. Walter Yeagley, Assistant Attorney General, Internal Security Division, Department of Justice (through Legal Adviser) requesting views as to what action should be taken re withdrawal of passport from Communist Party members (mentioning Flynn and Jackson, delegates to CPUSSR Congress).

October 25, 1961: PPT answered in detail Mr. Yeagley's telephone request concerning PPT hearing procedures. He was also furnished statistics regarding number of passports issued to persons subsequent to June 16, 1958 (Kent-Briehl decision) who on the basis of FBI information are Communist Party members or Communist Party members within recent past (5 years prior to passport application).

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November 3, 1961: PPT countermanded request to Immigration and Naturalization Service in Flynn matter. FBI and Justice advised.

November 16, 1961: PPT drafted for SCA—Bontempo signature—reply to letter dated November 9, 1961, from Congressman Walter to Secretary regarding House Committee on Un-American Activities interest in section 6, Internal Security Act. Reply stated internal procedures and close liaison being maintained with Department of Justice.

November 30, 1961: Passport Office sent memorandum to Mr. Abram Chayes transmitting two lists of persons who appear to be within the purview of 50 U.S.C. 785. The lists were compiled from the records of the Passport Office.

December 1, 1961: Passport Office sent a memorandum to Mr. Abram Chayes recommending the withdrawal of passports issued to individuals on the national levels of the Communist Party leadership; recommending the issuing of appropriate letters to such individuals concerned, notifying them to the tentative withdrawal of their passports and affording them a hearing and right to appeal.

December 7, 1961: Passport Office sent a memorandum to Mr. Abram Chayes recommending that the following statement be placed in all passport application forms, registration forms, agency notices, etc.: "Section 6 of the Internal Security Act of 1950 (50 U.S.C. 785) provides a severe penalty (fine and/or im-

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prisonment) for a member of the Communist Party of the United States who applies for a passport or for the renewal of a passport or who uses or attempts to use a passport."

December 7, 1961: Meeting in Legal Adviser's Office. Mr. Abram Chayes reviewed his conversations with the Department of Justice attorneys. Mr. Chayes advised Miss Knight of the Secretary's interest in not withdrawing passports but in having the statute enforced by means of criminal prosecutions in due course.

It was agreed that the Passport Office prepare a letter for Mr. Chayes' signature transmitting to Assistant Attorney General Yeagley for use in enforcement of the act, a list of persons holding valid passports who, on the basis of information supplied the Department by the FBI, appear to be within the purview of section 6 of the act.

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December 11, 1961: PPT sent two copies lists A and B (persons within sec. 785) to Mr. Yeagley under Mr. Chayes' signature.

December 15, 1961: Mr. Chayes cleared the proposed warnings to be inserted in Passport Office forms and a printing order was processed immediately by the Passport Office. New placards, cards, signs, and forms were among the documents to have the warning inserted.

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December 28, 1961: Mr. Lowenfeld of L called Miss Knight concerning L's redraft of proposed regulations stating he wished to set up a meeting concerning this draft between Miss Knight, Mr. Johnson, Mr. Meeker, and himself.

December 29, 1961: Meeting in the Legal Adviser's office with Mr. Meeker and Mr. Lowenfeld regarding the immediate issuance of revised regulations dealing with the denial of passports to Communists.

It was decided that sections 51.135 through 51.170 of the regulations on issuance of passports be reviewed and revised prior to the completion of a comprehensive study of passport regulations and the Executive order of 1938.

January 4, 1962: L's proposed regulations were transmitted to SCA as a final draft to be submitted to the Secretary for approval January 5, 1962, and referred for immediate publication in the Code of Federal Regulations. (See Mr. Cieplinski's memo to Mr. Jones of January 5, 1962.)

January 4, 1962: Memo from Miss Knight to Mr. Cieplinski, SCA (copy to Mr. Lowenfeld January 5, 1962), reiterating her view that she could not convince herself that she did not have reason to believe an individual was a Communist after reading classified information indicating he was one.

January 5, 1962: Memo from Mr. Michel Cieplinski, Acting Administrator, SCA, to Mr. Roger Jones, Deputy Under Secretary, proposing revision of L's draft of section 51.135–51.170 of passport regulations and requesting that approval thereof be withheld pending reconciliation of differences of opinions concerning them.

January 5, 1962: Memo from Miss Knight to Mr. Chayes transmitting L's draft of sections 51.135–51.170 in required format and inserting citation of statutory authority and statement relating to effective date of the regulations.

January 5, 1962: Letter from J. Walter Yeagley, Assistant Attorney General, to Mr. Roger Jones, Deputy Under Secretary, stating that the Department of Justice was of the opinion that the Department of State in denying a passport should conduct a hearing based upon an open record and that the statute (50 U.S.C. 785) does not contemplate the denial of passports on the basis of information which cannot, for security reasons, be disclosed.

The Department of Justice also indicated that if the applicant sought to contest the denial he would, in their view, be entitled under the statute to be confronted with the precise information against him and to be apprised of the source of such information. Mr. Yeagley further indicated in such cases where

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it is inconsistent with security interest to divulge information as to membership, the Secretary of State can properly consider that he does not have the "knowledge or reason to believe" which the statute makes a condition for the requirement that he deny a passport.

January 5, 1962: Letter from J. Walter Yeagley, Assistant Attorney General, to Mr. Jones expressing the views of the Department of Justice with respect to procedures to be followed by the Department of State in administering section 6 of the Internal Security Act of 1950.

January 6, 1962 (Saturday): Meeting at the request of Mr. Meeker, Deputy Legal Adviser, concerning the proposed passport regulations. Present were Mr. Meeker and Mr. Lowenfeld of L, Mr. Bryan of SCA, and Miss Knight and Mr. Johnson of PPT. Present during part of the meeting was Mr. Roger W. Jones, Deputy Under Secretary. Meeting was held to reconcile "difference" of views between L, PPT, and SCA over the regulations, in particular, with respect to the denial of passports and the use of classified information.

January 9, 1962: Memo to PPT from Mr. Lowenfeld of L transmitting the letter drafted by L to be sent to passport holders whose passports are to be revoked. Memo indicates Secretary had approved letter.

January 10, 1962: Mr. Lowenfeld advised by phone that revocation letter (referred to above) had been cleared with Department of Justice.

January 12, 1962: Press Release No. 24 of January 12, 1962, announcing the promulgation of the revised section 51.135–51.170 of the passport regulations. The press release also announced Department's plan to move to revoke outstanding passports of certain leading members of the Communist Party, U.S.A.

January 12, 1962: Revised sections 51.135–51.170 of the passport regulations were published in the Federal Register of January 12, 1962 (vol. 27, No. 8).

Mr. SOURWINE. Now, the two newspaper stories I have just put in the record, from the St. Louis Globe-Democrat, and the Washington Post, indicate that a major witness failed to appear at the Elizabeth Gurley Flynn hearing. That is true, is it not?

Miss KNIGHT. I understand it is true; yes, sir. I have not seen the transcript, nor have I read it.

Mr. SOURWINE. Mr. Johnson, is it true that a major witness failed to appear at the Elizabeth Gurley Flynn hearing?

Mr. JOHNSON. Yes, sir.

Mr. SOURWINE. Who was the witness who failed to appear?

Mr. JOHNSON. Mr. Thomas Traecy.

Mr. SOURWINE. Where does he live?

Mr. JOHNSON. He lives up in Long Island, N.Y.

Mr. SOURWINE. What does he do?

Mr. JOHNSON. He works for the Pennsylvania Railroad—I believe in the pullman shop.

Mr. SOURWINE. And why didn't he appear?

Mr. JOHNSON. Before we go into—I have been under strict instructions not to discuss the Flynn hearing. However, this seems to be actually not involved in the Flynn hearing itself. I mean it is part of the hearing, I suppose. I am just debating within myself whether I should go ahead and tell you about the Flynn case—since the decision has not been made by the Passport Office—we have not received the recommendations by the hearing examiner. And we are ordered to file briefs. And we still have 20 days to do that. I am wondering if I go into the Flynn case, whether I may prejudice the Government's case. We have gone to considerable expense and time and effort, and I certainly would not like to prejudice the case in any way, especially at this time. I would certainly be glad to go into it—all the facets of the case later.

Senator DODD. When you say prejudices the Government's case, I don't know quite what you mean.

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Mr. JOHNSON. Well, the case is still in a pending status, as it were.
Senator DODD. I understand. But who told you not to discuss it?
Miss KNIGHT. Well, this was a result——
Mr. SOURWINE. Pardon me, Miss Knight. Let Mr. Johnson say who told him not to discuss it.
Mr. JOHNSON. Let me say, as it was put to me by Mr. Roger Jones, it would be very inappropriate for me to discuss the case.
Senator DODD. Is this——
Mr. SOURWINE. When was this done?
Mr. JOHNSON. This morning, sir.
Mr. SOURWINE. By telephone?
Mr. JOHNSON. Yes, sir.
Senator DODD. Is this a sort of claim of executive privilege? What is it?
Mr. JOHNSON. I don't believe so. I think Mr. Jones' view was that I shouldn't discuss the case while the case was still in a pending status in the Passport Office.
Senator MCCLELLAN. Mr. Chairman—you speak of a case. What do you mean by case?
Mr. JOHNSON. Senator, we had the hearing revoking the passport of Elizabeth Gurley Flynn. We had witnesses appear to testify. The hearings have been concluded.
Senator MCCLELLAN. Before the Passport Office?
Mr. JOHNSON. Yes, sir.
Senator MCCLELLAN. You had hearings on revocation of her passport.
Mr. JOHNSON. Yes, sir.
Senator MCCLELLAN. And that hearing has not been decided—I mean you still——
Mr. JOHNSON. The hearings are concluded, but no decision has been made. The hearing examiner has not yet made his report. So actually no decision has been made in the Flynn case.
Mr. SOURWINE. Let me ask a question, with the Chair's permission.
You mentioned a hearing examiner. Does the State Department have any hearing examiners?
Mr. JOHNSON. No, sir.
Senator MCCLELLAN. I didn't understand that.
Mr. SOURWINE. I asked if the State Department had any hearing examiners.
Senator MCCLELLAN. What hearing examiners—from what source?
Mr. JOHNSON. I understand this hearing examiner was obtained through the Legal Adviser's office, from the Civil Service Commission.
Mr. SOURWINE. Why doesn't——
Senator MCCLELLAN. I am trying to follow this. You had a hearing examiner from where?
Mr. JOHNSON. He was obtained by the Legal Adviser's Office, through the Civil Service Commission.
Senator MCCLELLAN. They assigned him?
Mr. JOHNSON. Yes, sir.
Senator MCCLELLAN. The Civil Service Commission.
Mr. JOHNSON. Yes, sir.
Senator MCCLELLAN. To hold the hearing on this revocation of the passport.

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Mr. JOHNSON. Yes, sir.

Mr. SOURWINE. Isn't it true, Mr. Johnson, that the reason the State Department has no hearing examiners is because there is no law authorizing the State Department to have any or to hold any hearings?

Mr. JOHNSON. Well, we do have the regulations——

Mr. SOURWINE. Talking about law.

Mr. JOHNSON. That is right.

Mr. SOURWINE. Now, would you give this committee your professional opinion as to whether the issuance by the Secretary of State of a regulation providing for a hearing automatically authorizes his Department to hold hearings, where Congress has not given any such authorization?

Mr. JOHNSON. Well, we certainly should have legislation.

Mr. SOURWINE. Of course, you should.

Senator MCCLELLAN. Is Roger Jones your superior?

Mr. JOHNSON. Yes, sir; he is the Deputy Under Secretary for Administration.

Mr. SOURWINE. Mr. Chairman, the reason I am inquiring about the failure of this witness to show up—the fact is, as I understand it, three witnesses failed to show up.

This man Traecy, and two newspaper reporters; isn't that right?

Mr. JOHNSON. That is right.

Mr. SOURWINE. One newspaper reporter from the New York Times and one from the Associated Press. The State Department has by regulation set up this hearing procedure, which is not authorized by law, and has by regulation purported to grant passport applicants a right to be confronted at this hearing procedure with all the witnesses against them. The State Department then set up its first hearing, with Elizabeth Gurley Flynn, and they asked two newspaper reporters, who had been present when Elizabeth Gurley Flynn, in public, performed as a functionary of the Communist Party, to come down and testify to what they had seen. And it is counsel's information——

Senator MCCLELLAN. They didn't appear?

Mr. SOURWINE. They did not appear. It is counsel's information that the New York Times decided it did not want its reporter to appear, and that the Associated Press decided they were not going to embarrass the Times by having their man there. So that both reporters were instructed by their respective employers not to come. The State Department has no subpena powers and couldn't make them come. And this simply points up the fact that the State Department has by regulation granted to passport applicants a right which the State Department is not in a position to give them. And the net result is that under the regulations, since they cannot be given the right by regulation that is made a prerequisite to withdrawal or refusal of the passport, automatically every applicant is going to get his passport. The next step will be, just as sure as shooting, the State Department will be up here asking the Congress to give it authority to hold hearings, and to give it subpena powers, so that it can go ahead with this.

Senator MCCLELLAN. Let me ask this.

You, Miss Knight, and Mr. Johnson—you are just carrying out your superior's orders in this regard.

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Mr. JOHNSON. Yes, sir.
Senator MCCLELLAN. You didn't initiate the hearing.
Mr. JOHNSON. No, sir.
Senator MCCLELLAN. You didn't request the hearing.
Mr. JOHNSON. No, sir.
Senator MCCLELLAN. You requested that the passport be canceled.
Mr. JOHNSON. Yes, sir.
Senator MCCLELLAN. Your office requested that.
Miss KNIGHT. Yes, sir.
Senator MCCLELLAN. And as a result of your requesting that in the State Department, your superiors took the action that counsel has referred to here.
Mr. JOHNSON. Yes, sir.
Senator MCCLELLAN. Is that correct?
Mr. JOHNSON. Yes, sir.
Senator MCCLELLAN. Now, then, Mr. Jones tells you you ought not to discuss the case here before the committee.
Is that the instruction he gave you?
Mr. JOHNSON. Yes, sir; since no decision has been reached.
Senator MCCLELLAN. I understand. Since it is still pending, you are under instructions from him that it wouldn't be proper for you to discuss it here, is that correct?
Mr. JOHNSON. Yes, sir.
Senator MCCLELLAN. And that instruction came to you this morning.
Mr. JOHNSON. Yes, sir.
Senator MCCLELLAN. Is there anything else, Mr. Counsel?
Mr. SOURWINE. I have one more thing.
Senator MCCLELLAN. I was just trying to get it in its proper perspective.
Mr. SOURWINE. I think the story is clear on the record now, except for one thing. I have here the transcript of the proceedings in the Elizabeth Gurley Flynn case. They were furnished by Miss Knight in response to the committee's subpena, a procedure in every way the same as in many former instances when we have sought information by subpena from her office. I believe that this should be made a part of this record. This hearing record, if read by Senators, will be extremely instructive. It is a small sample of exactly what they are going to go up against every time they try to deny a Communist a passport. It is a minuscule portrayal of the kind of obfuscation that a Communist attorney will throw in the way. Every Senator ought to read it. I offer it for the record.
Senator MCCLELLAN. I don't know what it contains. Is there any reason why it shouldn't be received?
Senator DODD. I don't know of any.
Mr. SOURWINE. This is the official transcript of the hearing in the Elizabeth Gurley Flynn passport revocation case.
Senator MCCLELLAN. I will tell you what I would do. For the moment, I would let it be introduced for reference, so we can read it, and then we can determine what else to do with it.
Senator DODD. So ordered.
Mr. SOURWINE. Very good, sir.

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Senator McCLELLAN. It might be for reference, for the Senators only for the present, and let them determine it, and you can either direct it be made a part of the record——

Senator DODD. Very well.

Senator McCLELLAN. I don't know what is in it. I don't know if there is anything in there that shouldn't be public. I suppose the proceedings up to now are private.

Mr. SOURWINE. Well, the point is, Senator, this is an executive record. Putting them in this record does not make it public.

Senator McCLELLAN. I understand.

There may be some startling disclosures in it with respect to the kind of procedures being followed down there. Off the record.

(Discussion off the record.)

Senator DODD. We will recess at this time.

(Whereupon at 12:10 p.m. the committee recessed subject to the call of the Chair.)

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STATE DEPARTMENT SECURITY

THURSDAY, JUNE 7, 1962

U.S. SENATE,
SUBCOMMITTEE TO INVESTIGATE THE
ADMINISTRATION OF THE INTERNAL SECURITY ACT
AND OTHER INTERNAL SECURITY LAWS,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:55 a.m., in room 300, New Senate Office Building, Senator Roman L. Hruska presiding.

Also present: J. G. Sourwine, chief counsel of the subcommittee; Benjamin Mandel, research director; and Frank Schroeder, chief investigator.

Senator HRUSKA. Counsel may proceed.

STATEMENT OF ROGER W. JONES, DEPUTY UNDER SECRETARY FOR ADMINISTRATION, DEPARTMENT OF STATE; ACCOMPANIED BY ABRAM CHAYES, LEGAL ADVISER; AND ANDREAS LOWENFELD, OFFICE OF LEGAL ADVISER, DEPARTMENT OF STATE

Mr. SOURWINE. Mr. Chairman, at the start I should like to offer for the record a letter by Senator Dodd addressed to Mr. Jones, and a copy of Mr. Jones' reply, this letter having to do with the possibility of any reprisals against Frances G. Knight, who was a witness here, and Mr. Jones' assurance that there would be nothing like that. I think that should be in the record.

Senator HRUSKA. Very well, it may be accepted and will be part of the record at this point.

(The documents referred to follow:)

MAY 16, 1962.

Hon. ROGER W. JONES,
Deputy Under Secretary for Administration,
Department of State, Washington, D.C.

DEAR MR. JONES: It has come to my attention as vice chairman of the Internal Security Subcommittee that Miss Frances Knight, Director of the Passport Office, may be in trouble because of her compliance with a subpena duces tecum issued by this committee.

I do not wish to inject myself into the internal affairs of the State Department, but this situation appears to involve the rights and powers of the committee, as well as the question of reprisals against a witness before the committee. It does not seem to me improper to ask, therefore, and I do ask, that the committee be advised of any charges brought or any disciplinary action

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taken against Miss Knight or any other official or employee of the Department as a result of compliance with a subpena of this committee or appearance and testimony before this committee.

Best personal regards.

Sincerely,

THOMAS J. DODD,
Vice Chairman, Internal Security Subcommittee.

MAY 22, 1962.

HON. THOMAS J. DODD,
Vice Chairman, Internal Security Subcommittee,
U.S. Senate.

DEAR SENATOR DODD: Thank you for your frank letter of May 16 concerning a response of the Director and Counsel of the Passport Office to a subpena issued by the subcommittee on May 11 "for production of a transcript of the proposed hearing in the Elizabeth Gurley Flynn case." I assure you of the Department's desire at all times to cooperate with the subcommittees of the Congress, both willingly and voluntarily. I believe that the testimony by Miss Knight and Mr. Johnson demonstrated that desire. I regret, however, the impression left with the subcommittee by Miss Knight that she may be in trouble because of her compliance with the subpena.

As the officer of the Department with general supervisory responsibilities for the Bureau of Security and Consular Affairs I was concerned about this particular incident for three reasons.

First, neither Miss Knight nor Mr. Johnson, upon accepting service of the subpena, complied with provisions in the Department's regulations which have been in force for many years and which were made a matter of record at the time of Miss Knight's appearance before the subcommittee. I am sure you will agree that it is essential for the Secretary of State or one of his principal deputies to be promptly advised when subordinate departmental personnel accept service of a subpena and to give authorization for compliance. I do not consider that my action in calling attention to the failure to comply with regulations was a disciplinary action. I do not contemplate bringing charges against either Miss Knight or Mr. Johnson.

Second, the Department has taken more than ordinary care to conduct itself with complete legal propriety and proper procedure in the administration of passport regulations. In this case (revocation of the passport of Elizabeth Gurley Flynn) the issue of proper procedure and the avoidance of any action which might be considered prejudicial seem to us of the utmost importance because of the relationship of the laws and the proceeding to the security of the United States.

Third, the record demanded under the subpena was a part of a proceeding which has not been concluded. In my judgment an incomplete proceeding, and transcripts relating thereto, should not be introduced into the records of a congressional committee prior to the completion of the proceeding unless the need is so great as to permit no other course of action. I was gratified, therefore, to learn that the subcommittee had ruled that the materials supplied in response to the subpena would be held and not introduced into the record at this time. I believe that the subcommittee's action will provide some very essential safeguards against any claim of prejudice which might otherwise be made by the attorneys for Elizabeth Gurley Flynn.

With best personal wishes,

Sincerely yours,

ROGER W. JONES.

Mr. SOURWINE. Will you tell us, Mr. Jones, with whom was your letter to Senator Dodd cleared before it was sent?

Mr. JONES. The Office of the Legal Adviser.

Mr. SOURWINE. Do you mean Mr. Chayes or Mr. Lowenfeld?

Mr. JONES. To tell you the truth, I am not sure. I sent it downstairs and asked it be cleared. Mr. Chayes was actually out of town then, or he was not in at the time—I think that is correct.

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Mr. LOWENFELD. Yes.

Mr. JONES. But it was cleared by that office.

Mr. SOURWINE. Mr. Chairman, in view of the fact these gentlemen are both here together, is there any objection to asking questions of first one and then the other?

Senator HRUSKA. On this point?

Mr. SOURWINE. Yes.

Mr. HRUSKA. None at all. I think it should be cleared up so that we get the full intent of the correspondence.

Mr. SOURWINE. Does clearance of the letter, Mr. Lowenfeld, indicate that you concurred?

Mr. LOWENFELD. I saw the letter and had it formally cleared. Yes, I concurred in that, sure.

Mr. SOURWINE. Mr. Jones, do you agree with the testimony of Miss Knight, that any regulation which states that we could not consider confidential information makes it virtually impossible to deny passport facilities to members of the Communist Party U.S.A.?

Mr. JONES. Would you repeat that? I have not seen the testimony.

Mr. SOURWINE. This is testimony from page 17 of her testimony, that any regulation, and she was referring, of course, to passports, any regulation that states we cannot consider confidential information makes it virtually impossible to deny passport facilities to members of the Communist Party U.S.A.

Mr. JONES. I don't think I could agree with that entirely, sir, no.

Mr. SOURWINE. Mr. Lowenfeld, do you agree with that testimony by Miss Knight?

Mr. LOWENFELD. No sir, I don't.

Mr. SOURWINE. I would like to offer for the record, Mr. Chairman, a latter which has been received from Miss Knight. The substance of the letter is to offer a substitute chronology for the chronology which we more or less received from her since she was up here as a witness. I don't know what the ruling of this committee will be regarding the substitution of the one for the other, but I suggest that this letter and the accompanying chronology be put in the executive records, and if the committee decides to substitute they can do that later.

Senator HRUSKA. It will be received on that understanding and on that basis.

(The document referred to is printed as an appendix to this testimony, beginning at p. v.)

Mr. SOURWINE. This chronology, Mr. Chairman, refers under date of January 5 to a memorandum of that date from Mr. Cieplinski, Acting Administrator, to Mr. Roger Jones, proposing a revision of the draft passport regulations, and I wonder if we might request that a copy of that memorandum be furnished for our records.

Mr. JONES. From Cieplinski to me, January 5?

Mr. SOURWINE. Yes, sir, proposing a revision of the Legal Division's draft of the new passport regulations and requesting that approval be withheld pending a reconciliation of differences of opinion.

Mr. JONES. I would be glad to examine that, sir, and to notify you promptly.

(The information referred to reads as follows:)

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DEPARTMENT OF STATE,
ADMINISTRATOR, BUREAU OF SECURITY AND CONSULAR AFFAIRS,
January 5, 1962.

To: O—Mr. Roger W. Jones.
From: SCA—Michel Cieplinski, Acting Administrator.
Subject: Proposed regulations on the issuance of passports.

Attached are the Legal Adviser's proposed amendments on regulations covering the issuance of passports (22 CFR Sec. 51.135–169) (Tab A). This draft was transmitted to SCA by the Legal Adviser's Office on January 4, as a final draft to be submitted for approval by the Secretary today and referred for immediate publication in the Code of Federal Regulations. We have reviewed this draft in careful detail and feel that as drafted it would be virtually impossible to administer and misleading in that it would not result in the denial of passports to any Communists except the most notorious. In other words, the Legal Adviser's draft is unacceptable to SCA and the Passport Office. For instance, under section 51.138(a) Procedure for Review of Tentative Denial, there is provided (as underlined in red) that the applicant will be informed of the evidence, etc. In part (b) of this section, it is stipulated that the Passport Office shall not make use of confidential security information. Further, in section 15.142, the Board is precluded from using confidential information in making its determinations. Again, in section 51.163 under Hearings, the applicant must be informed of all evidence before the Board. Simply stated, the Board will not consider or receive any confidential information which constitutes the major portion of information in Communist cases.

The Passport Office, on December 15, 1961, had sent to the Legal Adviser's Office its version with comments on proposed rules and regulations governing the issuance of passports. It is believed that the regulations as proposed by PPT, particularly subpart (e), copy attached, Tab B, (the numbering system does not coincide with that prepared in the Legal Adviser's Office) is more meaningful and realistic so far as concerns the proper administration of passport control in the Communist area.

I strongly urge that the rules and regulations as proposed by the Legal Adviser's Office be revised in certain important aspects and cover those important aspect provided in the version submitted by the Passport Office.

It would be appreciated if your office would withhold approval of the Legal Adviser's proposal until these positions can be reconciled.

Attachments:
Tab A—Proposed amendments by the Legal Adviser's Office.
Tab B—Proposed regulations by the Passport Office.

Mr. SOURWINE. All right. I have another item which perhaps ought to be in our record, Mr. Chairman. These are the new passport application forms. The fact that there were to be new forms was mentioned earlier in this record. and we asked for a copy.

(The document referred to reads as follows:)

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EXHIBIT 6 Sample

(PLEASE TYPE OR PRINT)

DEPARTMENT OF STATE — FORM APPROVED BUDGET BUREAU NO. 47-R081.16

PASSPORT APPLICATION

(Before Completing this Application, Read Information for Passport Applicants on Page 4)

(Passport Office Use Only)

A

PART I - TO BE COMPLETED BY ALL APPLICANTS

(First name) (Middle name) (Last name)

I, _____, a citizen of the United States, do hereby apply to the Department of State for a passport.

MAIL PASSPORT TO

STREET _____

CITY _____ STATE _____

IN CARE OF (IF NECESSARY) _____

DATE OF BIRTH (Month, day, year) | PLACE OF BIRTH

HEIGHT _____ FT. _____ IN. | HAIR | EYES | APPROXIMATE DATE OF DEPARTURE

R O O OF

VISIBLE DISTINGUISHING MARKS | OCCUPATION

MY PERMANENT RESIDENCE (Street address, City, State) (If same as to mailing block, write "Same")

B

PERSONS TO BE INCLUDED IN PASSPORT

This section to be completed only if wife or husband is to be included in applicant's passport (Include photographic likenesses in group photo)

(WIFE'S) (HUSBAND'S) FULL LEGAL NAME

(WIFE'S) (HUSBAND'S) LAST U. S. PASSPORT WAS OBTAINED FROM

LOCATION OF ISSUING OFFICE | DATE OF ISSUANCE | NUMBER ☐ SUBMITTED HEREWITH ☐ OTHER DISPOSITION (STATE)

This section to be completed only if children are to be included in applicant's passport (Include photographic likenesses in group photo)

NAME IN FULL	PLACE OF BIRTH (City, State)	DATE OF BIRTH	RESIDED IN THE U. S. FROM TO

(LAST NAME) (FIRST NAME) (MIDDLE NAME) — TO BE PRINTED IN FULL

C

STAPLE ONE PHOTO BELOW
DO NOT MAR FACE

The two passport photos required must be approximately 2½ by 2½ inches in size; be on thin unglazed photo paper, show full front view of applicant with a plain, light background; and have been taken within 2 years of date submitted. When dependents are included they should be shown in a group photograph with the applicant. The Clerk or Agent will not accept photos that are not a good likeness. Color photographs are acceptable. Applicant, Clerk or Agent may staple photo here.

DO NOT IMPRESS SEAL OR STAPLE OTHER PHOTO. ATTACH LOOSELY BY PAPER CLIP.

(STAPLE HERE) (STAPLE HERE)

HAVE YOU PREVIOUSLY APPLIED FOR A U. S. PASSPORT? (If answer is "Yes", complete box below) ☐ YES ☐ NO

MY LAST U. S. PASSPORT WAS OBTAINED FROM (Single If included in another's passport, state name of bearer)

LOCATION OF ISSUING OFFICE | DATE OF ISSUANCE

NUMBER: ☐ SUBMITTED FOR CANCELLATION ☐ OTHER DISPOSITION (STATE)

(Passport Office Use Only)

FEE _____ EXEC. _____ TYE _____ POST. _____

FORM 12-61 DSP-11

(OVER - YOU MUST COMPLETE PAGE 2)

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FORM DSP-11 12-61 (PART I - Continued) PAGE 2

D

FATHER'S NAME	FATHER'S PLACE OF BIRTH	FATHER'S DATE OF BIRTH	☐ U. S. CITIZEN ☐ NOT U. S. CITIZEN
MOTHER'S MAIDEN NAME	MOTHER'S PLACE OF BIRTH	MOTHER'S DATE OF BIRTH	☐ U. S. CITIZEN ☐ NOT U. S. CITIZEN

E

☐ I WAS NEVER MARRIED ☐ I WAS LAST MARRIED ON	TO (Full legal name - complete maiden name(s) and surname(s))
WHO WAS BORN AT	ON (Place of birth)
☐ WHO IS A U. S. CITIZEN ☐ WHO IS NOT A U. S. CITIZEN	☐ MARRIAGE NOT TERMINATED ☐ MARRIAGE TERMINATED BY (DEATH) (DIVORCE) ON
☐ I WAS NEVER PREVIOUSLY MARRIED ☐ I WAS PREVIOUSLY MARRIED ON	TO (Full legal name)
WHO WAS BORN AT	ON (Place of birth)
☐ FORMER HUSBAND OR WIFE WAS U. S. CITIZEN ☐ FORMER HUSBAND OR WIFE WAS NOT U. S. CITIZEN	PREVIOUS MARRIAGE TERMINATED BY (DEATH) (DIVORCE) ON

IF MARRIED MORE THAN TWICE, SET FORTH FACTS IN A SUPPLEMENTAL STATEMENT

F

PROPOSED TRAVEL PLANS			
TRAVELING BY ORGANIZED TOUR? ☐ YES ☐ NO		PURPOSE OF TRIP	LIST EACH COUNTRY TO BE VISITED
PORT OF DEPARTURE NAME OF SHIP OR AIRLINE	APPROXIMATE DATE OF DEPARTURE NUMBER OF PREVIOUS TRIPS ABROAD WITHIN LAST 12 MONTHS		
MEANS OF TRANSPORTATION SHIP AIR OTHER DEPARTURE ☐ ☐ ☐ RETURN ☐ ☐ ☐	PLEASE INDICATE WHETHER YOU EXPECT TO TAKE ANOTHER TRIP ABROAD ☐ YES (IF YES, WITHIN) ☐ NO ☐ YEAR ☐ 2 YEARS ☐ 5 YEARS	PROPOSED LENGTH OF STAY	

IN THE EVENT OF DEATH OR ACCIDENT NOTIFY
NAME IN FULL — RELATIONSHIP — STREET ADDRESS, CITY, STATE

G

I have not (and no other person to be included in the passport has), since acquiring United States citizenship, been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces of a foreign state; accepted or performed the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof; voted in a political election in a foreign state or participated in an election or plebiscite to determine the sovereignty over foreign territory; made a formal renunciation of nationality either in the United States or before a diplomatic or consular officer of the United States in a foreign state; ever sought or claimed the benefits of the nationality of any foreign state; been convicted by a court or court martial of competent jurisdiction of committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, or conspiring to overthrow, put down or to destroy by force, the Government of the United States; or departed from or remained outside of the jurisdiction of the United States for the purpose of evading or avoiding training and service in the military, air or naval forces of the United States; and I am not and have not been at any time during the period of 12 full calendar months preceding the date of this application (and no other person to be included in the passport is or has been at any time during the said period) a member of any organization registered or required to register as a Communist organization under Section 7 of the Subversive Activities Control Act of 1950, as amended. (50 U.S.C. 786)*

If any of the above-mentioned acts or conditions have been performed by or apply to the applicant, or to any other person to be included in the passport, the portion which applies should be struck out, and a supplementary explanatory statement under oath (or affirmation) by the person to whom the portion is applicable should be attached and made a part of this application.

I solemnly swear (or affirm) that the statements made on all the pages of this application are true and that the photograph attached is a likeness of me and of those persons to be included in the passport.

OATH OF ALLEGIANCE

Further, I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation, or purpose of evasion; So help me God.

(To be signed by Applicant in presence of a Clerk of Court or Passport Agent)

Subscribed and (sworn to) (affirmed) before me this _____ day of _____, 19____

(SEAL OF COURT)

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FORM DSP-11 12-61 PAGE 3

PART II - TO BE COMPLETED BY A NATURALIZED CITIZEN

I HAVE BEEN ABSENT FROM THE U. S. DURING THE PAST 5 YEARS AT THE FOLLOWING PLACES FOR THE PERIODS STATED. REPEATED BRIEF TRIPS OF LESS THAN 2 MONTHS MAY BE SUMMARIZED (If additional space is needed a supplemental sheet should be used and attached) (If not absent, so state)

PLACE	FROM (Month, day, year)	TO (Month, day, year)
PLACE	FROM	TO
PLACE	FROM	TO

PART III - TO BE COMPLETED BY AN APPLICANT WHO BECAME A CITIZEN THROUGH OWN NATURALIZATION

I IMMIGRATED TO THE U. S. (Month) (Year)	I RESIDED CONTINUOUSLY IN THE U.S. FROM (Year) TO (Year)	I RESIDED AT (Cities, States)	
CERTIFICATE OF NATURALIZATION NO. ☐ SUBMITTED HEREWITH ☐ PREVIOUSLY SUBMITTED		DATE NATURALIZED	PLACE NATURALIZED (City, State)
I WAS NATURALIZED BEFORE THE (Name of court)		BEFORE NATURALIZATION, I WAS A NATIONAL OF (Name each country)	

PART IV - TO BE COMPLETED BY AN APPLICANT NOT BORN IN THE U. S. WHO CLAIMS CITIZENSHIP THROUGH PARENT(S)

I IMMIGRATED TO THE U. S. (Month) (Year)	I RESIDED CONTINUOUSLY IN THE U.S. FROM (Year) TO (Year)	IF FATHER NATURALIZED (Date)	CERTIFICATE OF NATURALIZATION NO. ☐ SUBMITTED HEREWITH ☐ PREVIOUSLY SUBMITTED
FATHER NATURALIZED BEFORE (Name of court)		PLACE NATURALIZED (City, State)	
FATHER RESIDED CONTINUOUSLY IN THE U.S. FROM (Year) TO (Year)	MOTHER RESIDED CONTINUOUSLY IN THE U.S. FROM (Year) TO (Year)	IF MOTHER NATURALIZED (Date)	CERTIFICATE OF NATURALIZATION NO. ☐ SUBMITTED HEREWITH ☐ PREVIOUSLY SUBMITTED
MOTHER NATURALIZED BEFORE (Name of court)		PLACE NATURALIZED (City, State)	

PART V - TO BE COMPLETED BY AN APPLICANT WHOSE WIFE (If she is to be included in passport), ACQUIRED CITIZENSHIP THROUGH NATURALIZATION OF HERSELF, HER PARENT, OR A FORMER HUSBAND

MY WIFE IMMIGRATED TO THE U. S. ON (Date)	☐ SHE WAS NATURALIZED ON (Month) (Day) (Year) ☐ HER FATHER WAS NATURALIZED ON ☐ HER FORMER HUSBAND WAS NATURALIZED ON	
BEFORE THE (Name of court)	PLACE NATURALIZED (City, State)	
AS SHOWN BY THE ACCOMPANYING CERTIFICATE OF NATURALIZATION NO.		
SINCE NATURALIZATION MY WIFE HAS BEEN ABSENT FROM THE U. S. AT THE FOLLOWING PLACES FOR THE FOLLOWING PERIODS:		
PLACE (Name each country visited)	FROM (Date of departure from U. S.)	TO (Date of return to U. S.)

PART VI - TO BE COMPLETED BY A MALE APPLICANT WHOSE WIFE WAS PREVIOUSLY MARRIED BEFORE MARCH 3, 1931 AND WHO IS TO BE INCLUDED IN PASSPORT

HER MAIDEN NAME WAS	DATE OF PREVIOUS MARRIAGE
NAME OF FORMER HUSBAND	PLACE OF PREVIOUS MARRIAGE
FORMER HUSBAND'S PLACE OF BIRTH	MARRIAGE WAS TERMINATED BY ☐ DEATH ☐ DIVORCE DATE
(IF MARRIED MORE THAN TWICE, SET FORTH FACTS IN A SUPPLEMENTAL STATEMENT)	

PART VII - TO BE COMPLETED BY A FEMALE APPLICANT WHOSE HUSBAND OR FORMER HUSBAND WAS NOT BORN IN THE U. S.

MY ☐ HUSBAND, OR ☐ FORMER HUSBAND IMMIGRATED TO THE U. S. ON (Date)	☐ HE ☐ HIS FATHER (Insert name)	WAS NATURALIZED BEFORE THE (Name of court)
PLACE NATURALIZED (City, State)	DATE OF NATURALIZATION (Month, day, year)	AS SHOWN BY CERTIFICATE OF NATURALIZATION NO. ☐ SUBMITTED HEREWITH ☐ PREVIOUSLY SUBMITTED

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FORM DSP 11 1963 PAGE 4

INFORMATION FOR PASSPORT APPLICANTS

1. This application must be executed personally before a Clerk of the Federal or State court authorized to accept passport applications or before a Passport Agent. The Clerk or Agent will give you all necessary information and guidance to complete this application. Be sure to fill in all the information requested on the foregoing pages which applies to you.

2. *Proof of United States Citizenship*

Persons who apply for passports are *required to present proof of their United States citizenship.*

A previously issued passport may be used for identification and proof of citizenship, instead of documents indicated below, and shall be submitted with the application.

A native born citizen shall present his birth or baptismal certificate. If these are not obtainable, an *affidavit* of his birth, executed by a parent, a close, older blood relative, or some other person having personal knowledge of the date and place of his birth can be submitted. To avoid delays, the applicant should ascertain from the Clerk of Court or Passport Agent exactly what information a birth or baptismal certificate or affidavit must contain in order to be acceptable for passport purposes.

A naturalized citizen shall present his naturalization certificate. Persons claiming citizenship through a native or naturalized citizen shall submit evidence of citizenship of the person through whom they claim citizenship.

3. *Identification*

An applicant is required to establish his identity to the satisfaction of a Clerk of Court or Passport Agent either through personal knowledge, the presentation of an acceptable document of identification or by an identifying witness who has known the applicant for at least 2 years. If a witness is required for identification the witness will be required to complete an affidavit. An affidavit form may be secured from the Passport Agent or Clerk of Court.

The following documents are acceptable for identification purposes *provided* they contain the signature and either a photograph or a physical description of the applicant: A previous passport, a naturalization certificate, a driver's license or a government (Federal, State, Municipal), industrial or business identification card or pass.

4. *Photographs*

Two duplicate photographs taken *within the past 6 years* shall be presented with the application. *Both photographs shall be signed by the applicant.*

Photographs may be in color or in black and white. A pleasant, natural pose is recommended. The prints should be capable of withstanding a mounting temperature from 180 degrees to 200 degrees, Fahrenheit. *Prints made on acetate or film base are not acceptable.* Tinted photographs are not acceptable. See instructions in photograph block on page 1 of application.

5. *Passport Fees*

The fee required for issuance of a new passport is $9.00. The execution fee is an additional $1.00 unless the application is executed before a Clerk of a State Court authorized to collect $2.00.

Do not pay any other fee to anyone for filling in or executing this application or for obtaining the passport except postage and/or necessary emergency charges.

6. Warning

Section 6 of the Internal Security Act of 1950 (50 U.S.C. 785) prohibits application for or use of a passport by and issuance or renewal of a passport to a member of an organization registered or required to register as a Communist organization under Section 7 of the Act. The following organizations are registered or required to register under Section 7:

The Communist Party of the United States

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Sample

FORM APPROVED BUDGET BUREAU NO. 47-R016.8

DEPARTMENT OF STATE

PASSPORT RENEWAL APPLICATION

(The passport and fee of five dollars ($5) shall accompany this application)

("Section 6 of the Internal Security Act of 1950 (50 U.S.C. 786) provides a severe penalty (fine and/or imprisonment) for a member of the Communist Party of the United States who applies for, or for the renewal of, a passport or who uses or attempts to use a passport.")

PASSPORT NO.

ISSUED ON

ISSUED AT ☐ WASHINGTON D. C. ☐

A (PLEASE PRINT NAME IN FULL) *(First name)* *(Middle name)* *(Last name)*

I, _____, a citizen of the United States, do hereby apply for a renewal of the passport indicated.

MAIL PASSPORT TO

STREET _____

CITY _____ STATE _____

IN CARE OF (IF NECESSARY) _____

MY PERMANENT RESIDENCE *(Street address, City, State)* (If same as in mailing block, write "Same")

DATE OF BIRTH *(month, day, year)* | PLACE OF BIRTH

B

PROPOSED TRAVEL PLANS

TRAVELING BY ORGANIZED TOUR? ☐ YES ☐ NO

PORT OF DEPARTURE | APPROXIMATE DATE OF DEPARTURE

NAME OF SHIP OR AIRLINE | NUMBER OF PREVIOUS TRIPS ABROAD WITHIN LAST 12 MONTHS

MEANS OF TRANSPORTATION

	SHIP	AIR	OTHER
DEPARTURE	☐	☐	☐
RETURN	☐	☐	☐

PLEASE INDICATE WHETHER YOU EXPECT TO TAKE ANOTHER TRIP ABROAD ☐ YES ☐ NO; IF YES, WITHIN ☐ YEAR ☐ 2 YEARS ☐ 5 YEARS

PURPOSE OF TRIP

PROPOSED LENGTH OF STAY

LIST EACH COUNTRY TO BE VISITED

IN THE EVENT OF DEATH OR ACCIDENT NOTIFY *(Name in full)* *(Relationship)* *(Street address, City, State)*

C

THIS SECTION TO BE COMPLETED BY A NATURALIZED CITIZEN

I HAVE BEEN ABSENT FROM THE U. S. DURING THE PAST 5 YEARS AT THE FOLLOWING PLACES FOR THE PERIODS STATED. REPEATED BRIEF TRIPS OF LESS THAN 2 MONTHS MAY BE SUMMARIZED *(If additional space is needed a supplemental sheet should be used and attached) (If not absent, so state)*

PLACE	FROM *(Month, day, year)*	TO *(Month, day, year)*
PLACE	FROM	TO
PLACE	FROM	TO

D

I have not (and no other person included in the passport has), since acquiring United States citizenship, been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces of a foreign state; accepted or performed the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof; voted in a political election in a foreign state or participated in an election or plebiscite to determine the sovereignty over foreign territory; made a formal renunciation of nationality either in the United States or before a diplomatic or consular officer of the United States in a foreign state; ever sought or claimed the benefits of the nationality of any foreign state; been convicted by a court or court martial of competent jurisdiction of committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, or conspiring to overthrow, put down or to destroy by force, the Government of the United States; or departed from or remained outside of the jurisdiction of the United States for the purpose of evading or avoiding training and service in the military, air or naval forces of the United States; and I am not and have not been at any time during the period of 12 full calendar months preceding the date of this application (and no other person included in the passport is or has been at any time during the said period) a member of any organization registered or required to register as a Communist organization under Section 7 of the Subversive Activities Control Act of 1950, as amended. (50 U.S.C. 786)*

If any of the above-mentioned acts or conditions have been performed by or apply to the applicant, or to any other person included in the passport, the portion which applies should be struck out, and a supplementary explanatory statement under oath (or affirmation) by the person to whom the portion is applicable should be attached and made a part of this application.

_____ *(Date of application)*

_____ *(Signature of applicant)*

*The following organizations are registered or required to register:
The Communist Party of the United States

FORM 12-61 DSP-17

$5 Fee received by *(initials)* _____

(Last name) (First name) (Middle name)

TO BE PRINTED IN FULL

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FORM APPROVED
BUDGET BUREAU NO. 47-R117.3

DEPARTMENT OF STATE
FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

APPLICATION FOR
☐ RENEWAL ☐ AMENDMENT ☐ EXTENSION
OF
☐ PASSPORT ☐ CARD OF IDENTITY
☐ REGISTRATION ☐ CERTIFICATE OF IDENTITY

Document No. _____ Date Issued _____

POST _____
☐ REFERRED TO DEPARTMENT FOR ACTION
RENEWED (EXTENDED) TO _____
☐ AMENDED AS REQUESTED
TARIFF NO. _____ SERVICE NO. _____
$ _____ FEE COLLECTED
☐ NO FEE COLLECTED

(PLEASE PRINT NAME IN FULL) (FIRST NAME) (MIDDLE NAME) (LAST NAME)

I, _____, a citizen of the United States, do hereby apply for the service indicated above. (If amendment, set forth details on REVERSE.)

DATE OF BIRTH (Month, day, year) | PLACE OF BIRTH

NOW RESIDING AT

UNITED STATES RESIDENCE (Street address, city, state)

IN THE EVENT OF DEATH OR ACCIDENT NOTIFY (Name in full, relationship, street address, city, state)

TO BE COMPLETED BY NATURALIZED CITIZEN ONLY

DATE NATURALIZED | CERTIFICATE OF NATURALIZATION NO. | NATURALIZED BEFORE (Name of Court)

I HAVE BEEN ABSENT FROM THE U. S. DURING THE PAST 5 YEARS AT THE FOLLOWING PLACES FOR THE PERIODS AND PURPOSES STATED (LIST ABSENCES OF MORE THAN 3 MONTHS' DURATION)

PLACE	FROM (Month, day, year)	TO (Month, day, year)	PURPOSE

PROPOSED TRAVEL PLANS

I INTEND TO RETURN TO THE UNITED STATES PERMANENTLY TO RESIDE WITHIN _____ YEARS _____ MONTHS

I INTEND TO CONTINUE TO RESIDE ABROAD FOR THE FOLLOWING PERIOD AND PURPOSE

IF RETURNING TO U. S. COMPLETE THE FOLLOWING

PORT OF DEPARTURE

NAME OF SHIP OR AIRLINE

DATE OF DEPARTURE

TO BE PRINTED IN FULL — LAST NAME — FIRST NAME — MIDDLE NAME

I have not (and no other person included in the passport has), since acquiring United States citizenship, been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces of a foreign state; accepted or performed the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof; voted in a political election in a foreign state or participated in an election or plebiscite to determine the sovereignty over foreign territory; made a formal renunciation of nationality either in the United States or before a diplomatic or consular officer of the United States in a foreign state; ever sought or claimed the benefits of the nationality of any foreign state; been convicted by a court or court martial of competent jurisdiction of committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, or conspiring to overthrow, put down or to destroy by force, the Government of the United States; or departed from or remained outside of the jurisdiction of the United States for the purpose of evading or avoiding training and service in the military, air or naval forces of the United States; and I am not and have not been at any time during the period of 12 full calendar months preceding the date of this application (and no other person included in the passport is or has been at any time during the said period) a member of any organization registered or required to register as a Communist organization under Section 7 of the Subversive Activities Control Act of 1950, as amended. (50 U.S.C. 786)*

If any of the above-mentioned acts or conditions have been performed by or apply to the applicant, or to any other person included in the passport, the portion which applies should be struck out, and a supplementary explanatory statement under oath (or affirmation) by the person to whom the portion is applicable should be attached and made a part of this application.

_____
(To be signed by Applicant)

Subscribed to before me this _____ day of _____, 19____

_____
(SEAL)

Consul _____ of the United States of _____

(The Department will assume that the consular officer, forwarding the application for the Department's decision, is fully satisfied as to the applicant's identity unless a notation to the contrary is made.)

FORM 12-61 FS-299

*The following organizations are registered or required to register:
The Communist Party of the United States

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Mr. SOURWINE. I understand these have been approved, is that right?

Mr. LOWENFELD. That is right.

Mr. SOURWINE. We do not have a printed copy.

Senator HRUSKA. Do the forms have numbers?

Mr. LOWENFELD. There are four forms.

Senator HRUSKA. For the purposes of the record, may I suggest that counsel reflect the numbers.

Mr. SOURWINE. Well, I do not know what the new numbers will be.

Mr. LOWENFELD. The same numbers.

Mr. SOURWINE. DSP–11, DSP–17, FS–299, and FS–176.

Senator HRUSKA. Very well, they will be received.

Mr. CHAYES. But there will be revised versions.

Senator HRUSKA. Does the record indicate it was revised as of a certain date?

Mr. SOURWINE. They will put a new date——

Mr. LOWENFELD. They will put it down here [indicating].

Mr. SOURWINE. The date of approval, is that right?

Mr. JONES. Well, there will be a new clearance number under the Federal Reports Act of 1942.

Mr. SOURWINE. Mr. Chairman, this is a draft of the proposed regulations concerning which you asked Miss Knight and Mr. Johnson, who were unable to enlighten us with regard to them.

I would like to ask you, Mr. Jones, and you, Mr. Lowenfeld, if either one of you can recognize this and perhaps identify it for us?

Mr. CHAYES. No; I cannot identify it at all.

Mr. JONES. I cannot identify that, sir.

Mr. SOURWINE. Has the question of requiring an affidavit in the passport been raised?

Mr. CHAYES. Yes.

Mr. SOURWINE. Has it been resolved?

Mr. CHAYES. By the resolution provided in the new form.

Mr. SOURWINE. Is there an affidavit to be required?

Mr. CHAYES. The new form of the passport application contains within the oath—I better read it:

> * * * and I am not and have not been at any time during the period of 12 full calendar months preceding the date of this application (and no other person to be included in the passport is or has been at any time during the said period) a member of any organization registered or required to register as a Communist organization under section 7 of the Subversive Activities Control Act of 1950, as amended.

Mr. SOURWINE. Was that backed up by any regulation, Mr. Jones, or is it deemed necessary it should be?

Mr. CHAYES. Let me add, there is a footnote to that portion of the oath and the footnote lists the organizations which are required to register. As of now there is only one, the Communist Party of the United States, but the footnote would be revised from time to time as future organizations are required to register.

No, it was not thought that a special regulation was needed. The order of the Secretary of State approving the form which was issued is, I think, enough to authorize the printing of this form.

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Mr. SOURWINE. You don't think there is any legal question that could be raised by a passport applicant as to whether there is authority to require an affidavit?

Mr. CHAYES. I think there is a legal question that could be raised, but I don't think it could be successfully raised, and I don't think the issue of whether there was a regulation or not would have any bearing on it.

Mr. SOURWINE. I have shown this to a number of individuals but in view of the fact that nobody can identify it, I do not think there is enough identification to offer it for the record.

Senator HRUSKA. Off the record.

(Discussion off the record.)

Mr. SOURWINE. Let me make a statement on the record, Mr. Chairman. This single page which has been the subject of the colloquy and which the witnesses we have here this morning have been unable to identify came into the possession of the committee with the indication that it was a proposal under consideration by the Department of State.

In view of the state of the testimony, it seems doubtful that was the case, but so that the record may be intelligible as to what we are talking about, may this go in simply as the draft which was shown all of these witnesses?

Senator HRUSKA. It will be admitted for that purpose.

(The document referred to reads as follows:)

(a) At any stage in the processing of an application or at any stage in proceedings before the Passport Office or before the Board of Passport Appeals, an applicant may be required as part of his application, to subscribe, under oath or affirmation, to a statement with respect to whether or not:

(1) He is presently a member of a Communist organization registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950; and

(2) He has been at any time since January 1, 1961, a member of a Communist organization registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950.

If the applicant states he is a member of such a Communist organization, no further action shall be taken to process his application.

If the applicant states he was a member of such a Communist organization at any time subsequent to January 1, 1961, he should explain fully in his statement all the circumstances surrounding the termination of his membership.

(b) If the applicant fails to furnish within 60 days any of the information requested under the provisions of subsection (a) or if he fails to respond within such period to a request for additional information, the processing of his application may be terminated.

Mr. SOURWINE. Thank you, Mr. Chairman.

Mr. Jones, you are familiar with the letter which Mr. Dutton sent to Senator Dodd in reply to Senator Dodd's letter about the new passport regulations?

Mr. JONES. Is this a letter dated January 29, 1962?

Mr. SOURWINE. That is correct—I thought it was January 20——

Mr. JONES. Well, I have only—I think this is—I am not sure, because Mr. Lowenfeld handed me a photostat which carries the date January 29. Is it in your record?

Mr. SOURWINE. Yes, and I will find it in just a moment, sir.

It is January 29, yes, sir.

Mr. JONES. May I have it, Counsel?

Mr. SOURWINE. Yes, sir.

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Mr. JONES. Yes, I have seen this letter. I can identify it as the letter I have seen.

Mr. SOURWINE. All right. Now, we are trying to find someone who prepared the letter or had the responsibility in that regard so that we can ask some questions about details of what is in the letter.

Did you have anything to do with preparing the letter, Mr. Jones?

Mr. JONES. No, I did not, other than there is a reference to a letter from Mr. Yeagley to me in here.

Mr. SOURWINE. Might I ask you, Mr. Chayes, or you, Mr. Lowenfeld?

Mr. CHAYES. I had the principal responsibility for preparing the letter and Mr. Lowenfeld assisted me.

Mr. SOURWINE. Well, then, if I may ask a few questions about it, gentlemen. The letter starts out in the second sentence with the indication that Mr. Leahy informed the chief counsel of the Internal Security Subcommittee that the intention was to put the regulations into effect with as much dispatch as possible. Senator Dodd's letter had indicated that the committee had been told it was planned to do this the following Monday.

Mr. Leahy is here. You did tell me Monday, isn't that right, Mr. Leahy?

Mr. LEAHY. I have to refresh my recollection to be precise in stating the date on which I stated this, which is certainly prior to their publication.

Mr. SOURWINE. Well, now, we talked about this before when we were not around the table, and you had no difficulty in recalling, you told me Monday. Are you having difficulty now?

Mr. LEAHY. I have to identify the date of Monday and also the date on which they were published.

Mr. SOURWINE. This is the letter, sir (handing document to Senator Hruska.)

Senator HRUSKA. Thank you.

Mr. SOURWINE. Now if you will notice, Mr. Chayes, about the middle of the second paragraph of this letter there is a sentence beginning, "There was thus a period in which persons possibly coming under the act could apply for passports."

Mr. CHAYES. Yes.

Mr. SOURWINE. Is that true, were there applications coming in?

Mr. CHAYES. I think there was one application, or more than one, that we had to hold up pending the issuance of the regulations.

Mr. SOURWINE. Well, what is the period referred to in this letter, do you know?

Mr. CHAYES. It is the period between the time on which the mandate of the court finally went into effect establishing the precondition of a final order requiring the registration of the Communist Party under the Subversive Activities Control Act.

Mr. SOURWINE. And the time on which the new regulations were——

Mr. CHAYES. Yes, the time of the new regulations.

Mr. SOURWINE. And you say there was at least one passport application during that time?

Mr. CHAYES. Yes.

Mr. SOURWINE. From persons who would be affected by this?

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Mr. CHAYES. Yes.

Mr. SOURWINE. Do you recall the name of that passport applicant?

Mr. CHAYES. I do not.

Mr. SOURWINE. It was not the Duimoviches?

Mr. CHAYES. It may have been, I don't recall right now.

Mr. SOURWINE. Now, this sentence in the letter is:

There was thus a period in which persons possibly coming under the act were applying for passports when no regulations were in effect under which we could deny that.

Mr. CHAYES. Yes.

Mr. SOURWINE. Well, in view of the very strong provisions as well as the prohibition of section 6, do you think you needed a regulation in order to deny a passport?

Mr. CHAYES. Well, let me put it this way, sir. We did not—we knew, obviously, that we had to have a regularized procedure under which everybody would know about—we were very conscious at all times of the possibility of litigation going to the Supreme Court on this matter, and we wanted to conduct ourselves in such a way as to safeguard the interests of the Government in that litigation, and so as to be sure and positive that there would be an affirmative result in an area that had been hazardous for the Government up until this time, so we did not think it was desirable to act without a regularized procedure.

Now, we would, on the basis of the statute and the statute alone, hold up any action on that application or applications. As I say, I don't recall how many, a small number, that we held up, and we did not deny them, we held them up, held up action pending the development of the regulations.

Mr. SOURWINE. Now, the statement appears in the second paragraph of the letter we are discussing:

As a matter of courtesy to the interested committees of the Congress, we gave them advance notice and distributed a summary of the regulations.

Was that summary prepared in your office, sir?

Mr. CHAYES. Yes.

Mr. SOURWINE (reading):

Because of the urgency of the matter and because of the fact that the text of the regulations was not very long it proved possible for the Federal Register to cut the normal time between submission and publication and to publish the regulations on Friday, January 12, rather than on the following Monday.

Mr. CHAYES. Yes, sir.

Mr. SOURWINE. Is that the whole story, is that the only reason why they were published on Friday?

Mr. CHAYES. Yes, sir; we had been pushing it and pressuring it, putting pressure, as much pressure as we could on whoever it is that prints the Federal Register to make sure we got the fastest publication time possible.

We had a lot of things to coordinate. We did not want the regulations to be issued without the courtesy of a notification to this committee. We had to arrange for appropriate press information and so on. There were approvals to be gotten from high levels in the Department and so everything—there was this problem of coordination during which time we constantly impressed upon the printers that we wanted them to be ready to go ahead as fast as possible to

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get these out, and when it became possible to get them out on Friday, we did it that way.

Mr. SOURWINE. The implication of what you say and I think of this letter is that the submission of the text of this regulation to the Printing Office was at the same time or about the same time as the notice which was given to the congressional committees.

Mr. CHAYES. I think it may have been a day earlier, or something of that kind, we got it there as soon as we could and then we asked them to hold up the publication pending our final coordinating activities.

Mr. SOURWINE. Wait a minute. You were just telling about urging the printers to print as fast as possible, and now you are asking them to hold it up?

Mr. CHAYES. No, we delivered the text before all of this final coordinating activity that I described was completed in order to get it published at the earliest moment after those coordinating activities, and we told them to print as soon as we gave them the go-ahead, and we gave them the——

Mr. SOURWINE. But the text was down there before it was finally approved, is that right?

Mr. LOWENFELD. That is not right.

Mr. SOURWINE. That is not right?

Mr. LOWENFELD. That is not right. The text was not sent until the Secretary of State and the Attorney General had explicitly approved it, but the text may have gone down there before the—all the congressional briefings had been completed.

Mr. SOURWINE. May I see that transcript, Mr. Chairman, please?

Do you know the date, Mr. Lowenfeld, on which the transmittal was made to the Federal Register?

Mr. LOWENFELD. It was either late Tuesday afternoon or Wednesday morning when the messenger actually took them over, and if you have got a calendar I can tell you. Friday was the 12th, so it was either Tuesday late on the 9th or early on Wednesday the 10th, and then I believe Mr. Leahy went up on the Hill on Wednesday and Thursday at the same time we were preparing press releases and some other briefings and so on.

Mr. CHAYES. Actually, I can confirm that, because I can confirm the fact that I directed Mr. Lowenfeld to send it over as we left the Secretary's office after the Secretary approved the regulation.

Mr. SOURWINE. I see. And what was the date the Secretary approved the regulations?

Mr. CHAYES. Tuesday the 9th.

Mr. SOURWINE. Now, the so-called "advance notice to the Committees" was on the 11th?

Mr. CHAYES. Well, I am not sure. Mr. Leahy handled that. Some of them were made on Wednesday and some were made on Thursday, it depended on when we could get in touch.

Mr. LEAHY. My recollection is on Wednesday I came down here and saw Representative Francis Walter and some of his staff members, and I attempted to contact Mr. Sourwine who, as I recall, was temporarily absent from his office, and I came back on Thursday and did in fact see Mr. Sourwine and handed it to him and discussed with him very briefly the regulations. I handed him the summary.

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Mr. SOURWINE. Well, we have in the record at page 43 the contemporaneous note which I sent to members of the committee dated January 11:

DEAR SENATOR: This summary of proposed new passport regulations was supplied just before noon today by Mr. Jack Leahy of the State Department, for the information of the subcommittee. Mr. Leahy advises the regulations have been approved by the Secretary and that it is proposed to publish them in the Federal Register next Monday with the emergency clause which will make them immediately effective upon publication.

But the question we are talking about is: When they went down to the Federal Register.

Mr. LOWENFELD. Either Tuesday night or Wednesday morning.

Mr. SOURWINE. We have in the record a memorandum from Sam Scott, assistant counsel of this committee, to me. Let me read it:

On February 5, 1962, Mr. Warren R. Reid, Director of the Publication Services Division, Office of the Federal Register, National Archives, and the Records Service, General Services Administration, Washington, D.C., made available to me his file containing the "originals" of six State Department regulations originally published in the Federal Register. Five of the six originals had transmittal letters attached. The original marked "No. 3" was the above-captioned regulation which did not have a letter of transmittal attached. When this was called to the attention of Mr. Reid, he remarked, "Strangely this one has no transmittal letter attached, apparently it must have been hand delivered by special messenger." Then Mr. Reid advised that 2 years ago his office required transmittal letters; however, since they didn't seem to serve any useful purpose, the requirement had been discontinued. But most departments and agencies still continued the practice.

An examination of the original No. 62 459, photostat copy attached thereto, revealed it was signed by Roger W. Jones, Deputy Under Secretary for Administration, and dated January 11, 1962. It was noted the signature of Mr. Jones was in blue ink and the date "January 11, 1962" was in red ink in handwriting appearing to be different from that of the signature.

The time-date block stamp of the Office of the Federal Register stamped at the bottom of the last page recorded the original as having been filed at 12:30 p.m., January 11, 1962. Examination of the Federal Register reflected the instant regulations were published and issued January 12, 1962, 27 F.R. 344. It was noted the Federal Register set forth the time of filing of the regulation as January 11, 1962, at 12:30 a.m. (Obviously a typographical error.)

Mr. Reid said it usually takes 2 or 3 days from date of signing in the agencies to clear the paper-flow route before the Office of the Federal Register receives a document of this nature, and then if it follows the normal course, about 72 hours elapsed from the time of receipt until publication. Noting the short interim between receipt and publication in this particular case, Mr. Reid remarked, "I seem to recall that we received an advance copy of this passport regulation so we could have the type set up in advance in order to publish it immed'ately in the Federal Register as soon as we received the signed original." At this point Mr. Reid said he would like to call Mr. Lawshe, the Assistant Director, who was more familiar with the details and circumstances surrounding this particular transaction.

Upon being called, Mr. Lawshe came to the office of Mr. Reid and confirmed that he had handled and was familiar with the details in this instance. Mr. Lawshe said he had received a call from the State Department, describing it as not a high-level call but by some clerk, saying this was not the normal procedure but an advance copy was being sent over so that the type could be set up in advance in order to expedite the publication, that they would call and tell them when the original was signed, and that the original would be sent later. Mr. Lawshe said, however, no call was received, but the signed original was hand delivered by special messenger and received at the time and date as stamped in the document. Mr. Lawshe advised that inasmuch as the type had been set from the advance copy it was ready and was published the following day, January 12, in the Federal Register (27 F.R. 344).

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It would appear, then, there was a copy of these regulations furnished to the Federal Register before they had been approved.

Mr. CHAYES. No. The approval took place Tuesday the 9th, and the copy was then furnished either the evening of the 9th or the late afternoon of the 9th, or Wednesday the 10th. That is, you see—excuse me, the Secretary of State approved the regulations in their final form as they appeared the afternoon of Tuesday the 9th. The rest of the business, that is the signing by Mr. Jones of the original of the order, was administrative, after the Secretary personally approved the issuance of the regulations.

Mr. SOURWINE. Did the Secretary sign or initial them?

Mr. CHAYES. I do not know that he signed the thing itself, but he certainly signed a memorandum recommending, you know, their approval.

Mr. SOURWINE. You don't know how they were identified?

Mr. CHAYES. Oh, yes. They were placed before him.

Mr. LOWENFELD. The memorandum in substance said: "This is the background, this is the problem we have. We propose you adopt the following regulations, adopt the recommendations and ask you to approve them"—and the initials appear on that memorandum.

Mr. SOURWINE. And that was approved on the 9th?

Mr. LOWENFELD. On the 9th.

Mr. CHAYES. Now, thereafter, Mr. Jones' signature, while formally necessary before the regulations went into effect, that was an administrative signature. The act of approval had already been done with the Secretary's signature.

Mr. SOURWINE. You will notice that in the next to the last line of the first page of the letter it says that they do not contemplate that the applicant shall examine any adverse evidence or witnesses—do you recall that Senator Dodd's letter was based wholly on the summary which your office had prepared—and you are aware, are you not, that your summary did say that the applicant would be entitled to examine any adverse evidence or witnesses?

Mr. CHAYES. I think the problem is one of context. The regulations say that the—the same thing—the point I made, however, is that he is not entitled to examine any adverse witnesses or any adverse evidence unless it is presented in a hearing. He cannot just come in and apply for a passport and then say, "I want to see all the evidence against me." It is not until there is a request for hearing and then the evidence is presented within the framework of the hearing that he is entitled to examine it and other evidence presented against him. Now——

Mr. SOURWINE. The point I am trying to get, sir, is this letter which you say you are responsible for, signed by Mr. Dutton, on the face of it appears to indicate that Senator Dodd made a mistake and was incorrect in what he said in his letter. The fact was that Senator Dodd, what he knew was precisely your summary—I see you shaking your head, Mr. Lowenfeld. Is that right or wrong?

Mr. LOWENFELD. Do you have Senator Dodd's letter? I don't think we have it with us.

Mr. SOURWINE. We do.

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Mr. LOWENFELD. I believe his letter was dated January 16, at which time the regulations themselves had come out, so I believe, if you read his letter to which this is in answer, you will see——

Mr. SOURWINE. Senator Dodd was certainly entitled to rely on the State Department's own official summary of the new regulations as to what they mean, was he not?

Mr. CHAYES. Well, I did not intend to make any issue of this and we did not intend any criticism of Senator Dodd. We responded to his letter in a way we thought was designed to clarify the meaning of the regulations. If the summary was inadequate or was misunderstood or was inadequately clear—that is why we answered the letter, in order to clear up any misconception that might develop.

Senator HRUSKA. And in that clearing up did you refer to the letter which was the basis of Senator Dodd's letter?

Mr. CHAYES. The summary?

Senator HRUSKA. Yes.

Mr. CHAYES. No, we did not. We did it by simply citing the actual language of the regulations and trying to clarify Senator Dodd's understanding.

Senator HRUSKA. However, Senator Dodd did say that, going according to this summary, and if you did not refer in some way to that and clear it up, the inference could be logically raised that it was Senator Dodd that was in error. I am sure that "a dead horse should not be beaten too hard," but I do draw attention to that for this record so that Senator Dodd will be cleared for future generations——

Mr. CHAYES. If there was any such inference, I want it eliminated now.

Mr. SOURWINE. Mr. Chairman, this is more important than merely clearing up whether Senator Dodd was wrong, because as the chairman knows, the agency is always given the highest credit for the interpretation of its own regulations and as long as this summary is in existence and it is in the record, it must be presumed to be the best interpretation of the regulations, and if the summary is wrong in that regard, I thought it would be desirable to have it disavowed now, and the situation cleared up.

Mr. CHAYES. For future generations and both for Senator Dodd and the construction of the courts, the whole intention of this confrontation procedure is not to give anybody access to FBI files when the FBI does not want them to have access to the files. It is only designed to permit examination of the evidence and witnesses in those cases where the FBI has decided that the evidence and witnesses may be disclosed so that a full hearing could be held.

Senator HRUSKA. That would be on a selective basis?

Mr. CHAYES. The Department of Justice, as Mr. Yeagley said in his letter, would expect to be consulted before any hearings were brought, and we would not—this is what the Justice Department said—they would not expect us to release any information without their approval. And we concur with that, and the regulations so provide.

Mr. LOWENFELD. That is the Executive order, as you know; section 7(c) of the Executive order requires that.

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Mr. SOURWINE. Isn't it true, Mr. Chayes, that a defendant has a right to this confrontation or else the passport must not be denied——

Mr. CHAYES. That is correct.

Mr. SOURWINE. The question is, What right does he have in the alternative, does he have a right only to confrontation by certain witnesses, or does he have a right to be confronted by any witnesses against him?

Mr. CHAYES It seems to me that this is governed by the ordinary procedures governing lawsuits. The proponents of actions, in this case the Department officials proposing the denial of the passport, have to make a case.

Now, they can put in live witnesses. They can put in newspaper stories. If you notice, the regulation does not require that the strict rules of evidence be observed. They put in whatever case they think they can.

Then the other person, the person against whom action is proposed, has a chance to meet that case. And he meets that either by giving affirmative evidence on his own behalf or seeking to discredit and tear down the evidence against him.

I don't think that gives him the right—I mean, confrontation, there is always the right to confront your accuser, if a person has accused him publicly——

Mr. LOWENFELD. In other words——

Mr. SOURWINE. Now, let him go ahead. If he needs your help he can ask for it.

This procedure is in the nature of a trial?

Mr. CHAYES. It is a hearing.

Mr. SOURWINE. What is the issue to be determined?

Mr. CHAYES. The issue to be determined, whether the passport should be denied on the grounds specified in our regulation; namely, that the applicant is a member of an organization required to be registered under the act.

Mr. SOURWINE. And the issue, you are saying, is whether the applicant is a member of such organization?

Mr. CHAYES. Yes, sir, that is the only ground on which a passport can be denied.

Mr. SOURWINE. The issue is not whether there is reasonable ground to believe that he is?

Mr. CHAYES. Well, I suppose that is right, whether there is reason to believe.

Mr. SOURWINE. What does "reason to believe" mean?

Mr. CHAYES. Well, it can mean a lot of things, depending on the context in which it is raised. In this case the Justice Department and we, as well, have construed the words "reason to believe" to mean reason to believe on the basis of evidence that can be made available.

Mr. SOURWINE. Now, that is adding something; you have taken a larger phrase and construed it that way. I am holding it down just to those three words, "reason to believe."

Now, "reason to believe" could mean information or knowledge such as would cause a reasonable man to believe?

Mr. CHAYES. Yes.

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Mr. SOURWINE. It could mean information or knowledge which would in fact cause the particular individual concerned to believe.

Mr. CHAYES. Yes.

Mr. SOURWINE. And it could mean any factual information tending to induce belief.

Mr. CHAYES. Yes.

Mr. SOURWINE. Is there any other alternative?

Mr. CHAYES. Oh, it might—I suppose there are a large range of things which it might mean, depending on the kind of evidence that one regards——

Mr. SOURWINE. Well, these are not questions of the kind of evidence. We are just talking about the phrase "reason to believe," when a man has reason to believe. If there is no information or evidence, obviously there is no reason to believe.

Mr. CHAYES. Yes, but——

Mr. SOURWINE. And if there is only a scintilla of information, we can still say there is not reason to believe.

Mr. CHAYES. Well, sometimes we have situations where there is reason to believe on the basis of very inadequate evidence——

Mr. SOURWINE. Suppose the man does, in fact, have information, is that reason to believe?

Mr. CHAYES. It might be so and not so, depending on the particular context.

Mr. SOURWINE. And if that is not so, then "reason to believe" would be such facts and information, such knowledge and evidence and information that would cause a reasonable man to believe?

Mr. CHAYES. That might be, or in certain kinds of situations, that reason to believe could be based on only the most highly probative kind of evidence and unless you have highly probative kinds of evidence you don't have reason to believe, sir. I think we are dealing with a question of statutory construction, you just cannot make—it seems to me, and I of course defer to others—but in my view you cannot make categorical statements of that kind without taking the context into consideration.

Mr. SOURWINE. You cannot tell us what "reason to believe" means?

Mr. CHAYES. Not without the context.

Mr. SOURWINE. You cannot agree that there is a range of what it may mean?

Mr. CHAYES. Yes, sir.

Mr. SOURWINE. But the meaning must fall within this range as a maximum requirement of that range, it would be such information or knowledge as would cause a reasonable man to believe?

Mr. CHAYES. No, I would say that in some contexts the phrase might be interpreted as requiring only reason to believe on the basis of particular kinds of evidence produced in particular kinds of proceedings.

Mr. SOURWINE. Do you think that "reason to believe" might be construed as requiring evidence convincing beyond a shadow of a doubt?

Mr. CHAYES. I can see—I think it might in certain circumstances, yes, sir.

Mr. SOURWINE. As a standard for "reason to believe"?

Mr. CHAYES. I think that if you want—I think what you are saying, or what you may be saying—let me not interpret what you are saying. I would say that the test of "reason to believe" might in circumstances be satisfied by less than actual belief on the part of the person, that is,

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less than that, and "reason to believe" I suppose is designed to suggest that something less than an actual conviction on the part of the person is required.

On the other hand, I don't think it says anything as to the question of the basis of that less than actual conviction. I think the phrase "reason to believe" goes not to the question of the evidence available, but to the state of the person's mind, that is, is it actual belief, or is it something less than actual belief? But that state of mind may be reached depending upon the context on the basis of a variety of kinds of evidence.

Mr. SOURWINE. I agree.

Mr. CHAYES. It might be compared to something like telling the jury to disregard some evidence. Now, the same might be true in a "reason to believe" situation, depending upon the context in which the words are used.

Senator HRUSKA. May I ask where is that phrase, "reason to believe?"

Mr. CHAYES. It is in the statute, sir. The statute prohibits an officer of the United States from issuing a passport to anyone he has reason to believe is a Communist—excuse me, not a Communist, is a member of an organization required to be registered.

Senator HRUSKA. And what do the regulations provide in that regard, would you comment on that?

Mr. CHAYES. Yes, sir. The regulations provide that the passport must be issued unless on the basis of a full hearing the person has reason to believe that the person—the officer, that is, the officer has reason to believe that the person is a Communist.

Senator HRUSKA. Well, after listening to all of these descriptions of what "reason to believe" might be, could officer A have reason to believe at the end of a hearing that there is such identification with the Communist Party and officer B, hearing that same evidence, come to a different conclusion?

Mr. CHAYES. Sure; sure.

Mr. SOURWINE. The point is, Mr. Chairman, these regulations require that a man forget, or assume that he never knew, anything he learns which is not or cannot be made at part of the public record at a passport hearing.

Mr. CHAYES. That is not correct—it does not require him to forget, because, in the one case so far, there was a hearing officer who had not theretofore been a part of the case so he did not have anything to forget.

Mr. SOURWINE. Well, just as an example of this kind of a situation, two passports have recently been issued to a man and wife by the name of Duimovich. Did you issue those passports?

Mr. CHAYES. No, sir.

Mr. SOURWINE. Who did?

Mr. CHAYES. They were issued by the—I don't know, sir. All passports are issued by the Secretary, in effect, in the name of the Secretary.

Mr. SOURWINE. Did you sign written instructions calling for the issuance of those passports?

Mr. CHAYES. I don't think I did.

Mr. SOURWINE. Did you, Mr. Jones?

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Mr. JONES. That name means something to me, Mr. Sourwine, but I cannot tell you at this juncture. I know there was discussion but whether this case came up to me, I cannot tell you.

Mr. SOURWINE. If anyone is to be charged with an offense under the Internal Security Act because of the issuance of those passports, who would be the proper person to be charged?

Mr. CHAYES. Would you please repeat that?

Mr. SOURWINE. If anyone is to be charged with an offense under the Internal Security Act because of the issuance of those passports, who would be the proper person to be charged?

Mr. CHAYES. In my opinion it would have to be the Secretary of State.

Mr. SOURWINE. The Secretary of State?

Mr. CHAYES. Yes, sir.

Mr. SOURWINE. And not any ministerial officer?

Mr. CHAYES. No, sir.

Mr. SOURWINE. Passports were then issued by order of the Secretary?

Mr. CHAYES. Yes.

Senator HRUSKA. Do I take it, when you say "The Secretary," that the only one person that can be charged for the wrongful or illegal issuance of a passport—obviously, the Secretary of State is the one, but he would act on information from someone else. Do you think these could be held guilty?

Mr. CHAYES. Well, I would say—obviously, I don't want this—let me put it this way:

This is a matter of speculative construction of the statute over which obviously the Department of Justice has the responsibility. In enforcing criminal statutes, they have the last say and therefore my words should be discounted. But I suppose a person who had acted under orders of a legitimate superior would not be committing a crime; but it might be that a policy officer who took first responsibility, knowing on the basis of evidence available in a public hearing that the person was a Communist, that a policy officer who took responsibility for those instructions, that is, directing the issuance of a passport, but not as high as the Secretary of State, might also be guilty of crime.

Mr. SOURWINE. Mr. Jones, when you ordered the Duimoviches passports, had you read the FBI report on those individuals?

Mr. JONES. I don't recall any of the details. There was considerable discussion, but I don't recall the details.

Mr. SOURWINE. You don't even recall there was evidence they were Communists?

Mr. JONES. When you say, did I read the FBI report, I don't remember the FBI report was in the material. I know that at some point—I know there was summary material prepared in our own shop, but whether the FBI report—I don't know.

Mr. SOURWINE. Did you believe those summary materials to be reliable?

Mr. JONES. Yes.

Mr. SOURWINE. Did you then know that the Duimoviches had been active in the Communist Party up until 1960?

Mr. JONES. I don't know the details of the Duimovich case.

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Mr. SOURWINE. You don't know—did you have any reason to believe that the Duimoviches were Communists or might be Communists?

Mr. JONES. I cannot answer that question, Mr. Sourwine, because I don't remember the details under which this thing came into my office.

Senator HRUSKA. Mr. Jones, if you had known, would you have signed the order?

Mr. JONES. This would depend on the nature of the case as presented to me, Mr. Chairman, under the regulations which were then in force and effect.

Mr. CHAYES. If I may be permitted to inject something here, I think the answer to that is simply to be found in Mr. Yeagley's letter to Mr. Jones, a copy of which the chairman already has.

It talks about this very question, the problem of the disclosing of the information which the FBI does not want disclosed, and it says that it does not follow that your Department must divulge information where security interests require that it be kept secret. Such an interpretation would require one to read the act as undermining the very security it was designed to promote. Rather, where it is inconsistent with security interests to divulge information as to membership, the passport should be issued and the information withheld. In such cases, the Secretary of State can properly consider that he does not have the "knowledge or reason to believe" which the statute makes a condition for the requirement that he deny the passport.

Now I think that Mr. Jones was acting on the basis of an official opinion by the Department of Justice, by the Assistant Attorney General who is charged with enforcement of this statute, that under those circumstances he could properly consider that he did not have reason to believe, and I think that is the answer.

Mr. SOURWINE. Well, that is quite a defense. Do you have to adopt it, Mr. Jones?

Mr. JONES. I have to adopt it, yes, sir.

Mr. SOURWINE. Why do you have to adopt it?

Mr. JONES. Because this is what the whole issue is about in terms of the responsibility which was vested in my office by the regulations, putting up to me any questions of doubt.

Mr. SOURWINE. Are you telling us then that in the Duimovich case you disregarded any information which you could not or did not put into the public record in deciding whether you had reason to believe they were Communists?

Mr. JONES. Yes.

Mr. CHAYES. Yes, and——

Mr. SOURWINE. Let him answer.

Mr. CHAYES. I am sorry.

Mr. SOURWINE. Is that right?

Mr. JONES. Yes.

Mr. SOURWINE. Do you recall that matter?

Mr. JONES. Well, I still do not recall the way in which the Duimovich case came to my office, nor do I recall whether there was a signoff in my office. I am inclined to believe that I must have.

Mr. SOURWINE. Let me ask you, where officials of a particular Department in the executive branch are attempting to justify a course of

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action taken by them on the ground that such course of action was required by legal opinion from the Department of Justice, will you agree that it is proper, pertinent and germane to show, if this be the fact, that these officials themselves or some of them participated in the drafting of the Department of Justice letter approving the text before it was signed and formally transmitted?

Mr. JONES. No, I don't, I don't think I could agree with that.

Mr. SOURWINE. Would you agree to that, Mr. Chayes?

Mr. CHAYES. Well, first of all, although this appears in a letter from the Department of Justice, I would say that I in the exercise of my own responsibility independently reached the same result——

Mr. SOURWINE. Your office participated in the drafting of that letter, didn't it?

Mr. CHAYES. I dont' believe—I am not altogether sure. I am sure that representatives of my office were at a meeting and heard a draft read and they made suggestions.

Mr. SOURWINE. Mr. Lowenfeld did not participate in the drafting of that letter?

Mr. LOWENFELD. No, sir, I did not. I did—as Mr. Chayes said, he was out of town, and with the acting Legal Adviser, I went to a meeting at the Justice Department in which a draft of the letter—and I take it the draft is more or less what is here—the drafts were read to us and we were asked, "How does this sound to you?" And we said it sounded all right.

There is not a word in this letter that represents my hand.

Mr. CHAYES. And may I add, to make the record complete, I don't want to hide anything, we were in consultation with the Department of Justice on this matter. It was obviously a matter of deep concern to both our Department and the Department of Justice. It involved the administration of a criminal statute in which the Department of Justice had enforcement responsibility, and it involved activities in the Immigration and Naturalization Service, who are the people who handle passports at the ports of entry, and it involved responsibilities and problems of the FBI, all of which are responsibilities of the Department of Justice and obviously, in a matter of this kind, it would not have been consistent with the precepts of wise administration to lock ourselves in one cell and them in another——

Mr. SOURWINE. Well, you obviously knew what this letter was going to say——

Mr. CHAYES. Oh, sure.

Mr. SOURWINE. Before you received it.

Mr. CHAYES. Yes, sir.

Mr. SOURWINE. Because you were acting on it before it had been formally signed.

Mr. CHAYES. No, we were not acting on it before it had been formally signed.

Mr. SOURWINE. But your regulations were finalized, you knew such a letter was going to come over.

Mr. CHAYES. Oh, yes.

Mr. SOURWINE. Before it arrived.

Mr. CHAYES. Sure we did; sure we did, no question about that.

Mr. SOURWINE. It was not a situation in which you were compelled by the Department of Justice to have taken a particular course of action.

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Mr. CHAYES. Yes—I mean, as I said in the beginning, although this letter comes from the Department of Justice, I independently in the pursuit of my own responsibilities as Legal Adviser of the State Department, having myself a responsibility to construe the statute for purposes of our own administration, reached the identical decision.

Mr. SOURWINE. Did you review the Duimovich case?

Mr. CHAYES. I—let me say I knew about it. I was in oral contact with it. I may even have cleared the orders to issue the passports, but I did not see the file, the underlying file.

Mr. SOURWINE. Did you review the files, Mr. Lowenfeld?

Mr. LOWENFELD. I saw the memorandum prepared in the Passport Office which enclosed a letter from the Passport Office, either from Miss Knight or her deputy, to the Internal Security Division, and the letter back. I read both documents. The Justice Department said there is no evidence we can disclose, and then those two letters with a covering memorandum from Miss Knight to Mr. Jones did come to me and I did look at it, and I think—I know I showed it to Mr. Chayes and I think personally took it to Mr. Jones——

Mr. SOURWINE. You used the phrase "no evidence we can disclose"——

Mr. LOWENFELD. I was speaking of the FBI.

Mr. SOURWINE. You did not mean to imply that the Department did not furnish information to the Department of State—you mentioned the Department of Justice has said no evidence can be in public——

Mr. LOWENFELD. We [Department of Justice] can withhold our consent under section 7(c) of the Executive order to allow the State Department to release such information as had been previously furnished.

Mr. SOURWINE. Did you at that time know what the Department of Justice knew about the Duimoviches?

Mr. LOWENFELD. All I saw was a summary prepared in Miss Knight's office; I don't think I ever read the FBI file.

Mr. SOURWINE. Would that summary reveal what the Justice Department Investigative Branch knew about the Duimoviches' connection with the Communist Party?

Mr. LOWENFELD. I don't know, but I remember there was a conclusion reached that there may have been some evidence of membership extending to a time not too far in the past.

Mr. CHAYES. Again—and I don't want the record to make it seem as though we are evasive—I think we all knew there was material in the Justice Department files, or there would have been no reason for making the request of the Justice Department about disclosure if there had been none. So I knew that, I did not know what it was exactly but I knew there was something.

Mr. SOURWINE. Mr. Jones, do you think it is possible to brainwash a man by administrative order?

Mr. JONES. I would have to answer by: What do you mean by "brainwash"?

Mr. SOURWINE. Can you order a man administratively to forget something he knows?

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Mr. JONES. Yes.

Mr. SOURWINE. You agree with that?

Mr. CHAYES. Well, I would say simply that that problem, right now, is much like the problem involved in a jury trial when there is evidence that is inadmissible, a question of the evidence being admissible or inadmissible, something like that, or where a question is asked and answered and then objection is made and the judge will tell the jury, "Gentlemen of the jury, you must disregard that answer in reaching your decision." That is exactly——

Mr. SOURWINE. Are you a trial lawyer, Mr. Chayes?

Mr. CHAYES. I have been in trials.

Mr. SOURWINE. As a trial lawyer, do you think the jury forgets it?

Mr. CHAYES. Well, let me put it this way, Mr. Sourwine: I know that there must be enough evidence that is proper in the record so that an appellate court can say that the jury could have reached this conclusion without considering that evidence, and I suppose that is the same problem we have here.

It may be, I say, physically impossible for a person to forget, that may well be true.

Mr. SOURWINE. That is right.

Mr. CHAYES. But on the other hand, it is possible to say that a person shall make his decision on the basis of a record which supports that decision——

Mr. SOURWINE. Making a decision is one thing, but belief or disbelief is another thing. Do you think that thought control by administrative order is possible or desirable?

Mr. CHAYES. Well, not only do I think it is not possible, I think it is undesirable, and I don't think it should be practiced.

Mr. SOURWINE. You would agree, then, you cannot by administrative order require a man to believe or disbelieve?

Mr. CHAYES. Not in the common parlance of the term.

Mr. SOURWINE. Well, now——

Mr. CHAYES. May I please finish? We are not talking about—we are not engaged in a conversation at a dinner table when we talk about belief in this sense. We are talking about beliefs—we are not even talking about—we are talking about reason to believe in a specific sense as used in a specific statute and we are construing technical language used in a statute.

Now the mere fact that those same words have a common meaning does not necessarily mean that the common meaning has to be taken as the meaning to determine the statutory construction.

Mr. SOURWINE. Mr. Chayes, wouldn't you agree with this, that if an official of the State Department has seen or knows of information from a reliable investigative agency of this Government that shows that Mr. X is a member of the Communist Party and cannot forget it by regulation as you have admitted, and is, in fact, convinced that the man is a member of the Communist Party and if, further, that information which came to him is sufficient if presented to a reasonable man to convince such a reasonable man, wouldn't you agree that in a case like that the man has reason to believe?

Mr. CHAYES. Not in the meaning of this statute, sir. And I would say the statute is very explicit in eliminating the subjective belief of the official. It does not talk about whether the official believes.

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Mr. SOURWINE. Mr. Chairman, I would like to read into the record section 6 of the Subversive Activities Control Act:

> (a) When a Communist organization as defined in paragraph (5) of section 782 of this [code] title is registered, or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful for any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—
>
> (1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or
>
> (2) to use or attempt to use any such passport.
>
> (b) When an organization is registered, or there is in effect a final order of the Board requiring an organization to register, as a Communist-action organization, it shall be unlawful for any officer or employee of the United States to issue a passport to, or renew the passport of, any individual knowing or having reason to believe that such individual is a member of such organization.

Mr. CHAYES. Well, that is the statute.

Mr. SOURWINE. There it is.

Senator HRUSKA. In effect, it means—in the way you construe it—it means whether the official forgets the information or not, he certainly is commanded officially to disregard it.

Mr. CHAYES. Must disregard it.

Senator HRUSKA. In other words, you violate the statute.

Mr. CHAYES. No, sir, we don't believe it is a violation of the statute.

Senator HRUSKA. And why don't you believe—because of constitutional considerations you draw up—you say yourself, "We consider this is unconstitutional, we are denying this man something he is entitled to under the Constitution and it does not make sense." But don't you believe also that if it does not make sense, that is something for the Congress to decide, and if there is any unconstitutionality, then that mandate should come from the Congress? Aren't you to obey the mandates of the Congress, and if somebody wants to contest that, they have the courts to go to and the court will then say that the law is unconstitutional and therefore cannot be enforced, and are you not anticipating that result when you are construing the constitutionality and telling the Congress, "You don't know your business, you don't know what the Constitution is, and I am going to put my interpretation on this, I am going to interpret the Constitution"?

Mr. CHAYES. I don't think that is quite—at least, that has not been my attitude, sir.

Senator HRUSKA. Well, except that I gather from the letter of January 5——

Mr. CHAYES. Well, the letter of January 5—let me start with this proposition. If Congress were to pass a statute which said to deny passports on the basis of confidential information that the man is a Communist, and said that in so many words, obviously it would be clear and our views as to the constitutionality of that kind of a law would become subsidiary. We have to follow the mandate of the Congress when it appears that way.

This act does not say that at all. It presents us with a problem of construction. We have to decide whether we are going to consider all the evidence, whether we are going to have open hearings, whether we are going to consider other evidence. We are forced to make a decision that is not made for us by statute.

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Now, in making such a decision we are performing our duties as law officers, I believe, and we have done so not only on the basis of the constitutional decisions which I think do shed some light on it, but we have examined the general structure of the statute itself. And if you look at the statute itself in every other case where a person is identified as a member of an organization or—he has or he is entitled to an opportunity for a hearing on the record.

Senator HRUSKA. And you wish to interpose those, the right to a hearing in one case, and you say that the Congress really did not know what it did and we are going to interpose those others in those situations where the Congress deliberately did not provide it, that is what you are saying——

Mr. CHAYES. Well, even in this case Congress made it a crime for one to apply or get a pasport under these circumstances. In order to prove there is a crime committed you would have to have an open hearing at which the evidence was disclosed. Even on your theory of what the administrative official can take into account, and if you say he must take into account confidential information, then when you have the criminal prosecution against the administrative officer you would still have to show what confidential information he had access to, so you would still have to disclose the information.

In other words, the more you look at the statute the more you see that the statute at every turn was very solicitous to protect the individual's rights to a full hearing.

Why? For a very simple reason. After all, we all know that if you call a person a Communist in our society, it is a very serious thing——

Mr. SOURWINE. I beg your pardon—let me break in. This act was solicitous, it showed a good deal of solicitousness, but not solicitude for Communists, other than the interpretations that have been placed upon this section by others than Congress——

Mr. CHAYES. I was not talking about solicitousness—about the right to a full hearing.

Senator HRUSKA. Not in this particular sense of making it unlawful for an officer to issue a passport if he has reason to believe—and the law is not complete—what you seek to change in the law in effect is this, when he has reason to believe or when that reason for political considerations should be disregarded, that is what you put in.

Mr. CHAYES. Well, I agree that——

Senator HRUSKA. And Congress did not and you are legislating, and the Congress law is held pretty much to be below the dignity of all of you to enforce as it is put in the law, and we have been kicked around, the Congress, for over 12 years on this same kind of business, and in my judgment it is not just a matter of not being solicitous, we don't believe in that solicitude toward those people, and you are trying to take advantage and wreck this, and with all due deference to all constitutional interpretations, the burden is on them and you should not carry the flag for them in that regard—and I speak not only for myself, I know it is the thinking of many of my colleagues that subscribe to that view.

Mr. CHAYES. Well, we are in an impasse. But I would like not to let it remain on the record, that we have done this out of any solicitude for the Communists.

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Our conclusion was reached—not because we are solicitous for American Communists, but we thought that was the interpretation that should be put on the provisions of the act as viewed in the light of the cases.

Mr. SOURWINE. Any implication that might be carried in what I said that you or any individual would personally be solicitous for Communists, I personally disavow. That was not meant. I was talking about the tenor and not any individual.

Senator HRUSKA. And I will subscribe to that for any remarks that I made, and I shall carefully look at the transcript. But the effect is certainly there and repeatedly for 12 years we have been kicked around about that.

Mr. SOURWINE. Mr. Chairman, I will confess an error. I think I made an error in attempting to cover the situation with all three of these gentlemen at the same time. We are in a morass where we obviously are not going to be able to get through. There is a reason for trying to get through with Mr. Jones.

Mr. Jones is, at some time in the indefinite future, about to leave the Department of State—do you know when?

Mr. JONES. I don't have a date except in the relatively near future.

Mr. SOURWINE. So it would be desirable to complete his testimony while he is an official of the Department.

Senator HRUSKA. Off the record.

(Discussion off the record.)

Senator HRUSKA. Mr. Jones, in connection with this letter of Senator Dodd addressed to you, it does say:

I ask that the committee be advised of any charges brought or any disciplinary action taken against Miss Knight or any other official or employee of the Department as a result of compliance with a subpena of this committee or appearance and testimony before this committee.

Now, in reviewing and reading your answer of May 22, the only direct response I find to that particular language is found in these words:

I do not contemplate bringing charges against either Miss Knight or Mr. Johnson.

I bring that up for this reason. Senator Dodd asked that he be advised of any charges or any disciplinary action. Can you tell us that the Department or your successor in your position will inform the committee of any such charges that might be brought or any disciplinary action that might be exercised against either Miss Knight or anybody else?

Mr. JONES. Well, this is a closed incident, Mr. Chairman——

Senator HRUSKA. It is not closed with us, I assure you.

Mr. JONES. No, but I mean insofar as my involvement is concerned. I cannot speak for my successor, but I certainly contemplate no action and have taken no action.

Senator HRUSKA. You cannot speak for your successor in person; however, you can speak for the policy of the Department.

Mr. JONES. The policy of the Department right now is, this is a closed incident.

Senator HRUSKA. Well, I would very respectfully like to differ. You could consider this as a closed incident but if it is closed, tomorrow charges could be brought and we would not be informed and we

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don't propose to have that happen, nor would we contemplate this being a closed incident if any disciplinary action was taken against Miss Knight or anyone else on account of their appearance and testimony. I assure you most respectfully we do not consider this a closed incident.

Mr. JONES. Well, may I clarify, Mr. Chairman? Senator Dodd's letter to me was immediately reviewed by me with the Secretary. My recommendation was that there was no appropriate course of action beyond calling to her attention the fact that she had not complied with the Department regulations, that is all that was done, that is all I intended to do and as far as I know that is all the Secretary intends to do, and I assume his will will be guiding to my successor.

Senator HRUSKA. As of now it is a closed incident. There will be no disciplinary action?

Mr. JONES. Right.

Senator HRUSKA. And no charges?

Mr. JONES. That is right.

Senator HRUSKA. I understand. I thought that perhaps you figured it was something that we should forget about.

Mr. JONES. No, sir.

Senator HRUSKA. In trying to clarify this, I just do not want to seem to condone any disregard of any official or employee in the Department for Department regulations when they do get a subpena, because you do have your rules and they should be guiding, and I do not want to criticize you for calling in Miss Knight and saying, "Look, there are these rules and we want you to follow them until they are either changed or repealed, until then we have them and we want to have them obeyed and we want you to obey them."

I want to make the record clear on that, but without particular reference to Miss Knight, because it may happen with other witnesses as they appear and it may have happened, I do not know, it has not been brought to my attention.

But the committee did proceed in good faith and we just do not want any dereliction on our part to be visited upon somebody who responded in good faith.

Mr. JONES. Oh, no, sir, Mr. Chairman.

Mr. SOURWINE. I might say that the record in that passport proceeding is still being held out of even our executive record until the committee—until the case has been determined.

Senator HRUSKA. Yes, and I am glad to find that there will be a thorough consideration and a collaboration with the Department before any of this testimony is released, I am in very full sympathy with that, and it will not be released until then, and that has been the history of this committee in the past and it will continue to be.

Thank you very much. Will you proceed, Counsel?

Mr. SOURWINE. Yes, sir. I have something I want to put in the record. This is a memorandum, Mr. Chairman, for which I am not wholly responsible. It came from our shop and I accept responsibility for it, commenting on Mr. Yeagley's letter of January 5 to Mr. Jones, and I would like to have it go in the record.

Senator HRUSKA. Very well.

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(The document referred to reads as follows:)

COMMENT ON J. WALTER YEAGLEY LETTER JANUARY 5, 1962, TO MR. ROGER JONES, DEPUTY UNDER SECRETARY FOR ADMINISTRATION, DEPARTMENT OF STATE

With the exception of Cronan, the cases mentioned by Mr. Yeagley do not support the proposition for which they were cited:

Cronan, Beilan v. *Board of Education*, 357 U.S. 399 (1957), and *In re Anastaplo*, 366 U.S. 36 (1961), were cited to support the proposition that the Department of State might decline to process a passport application when an applicant had not answered the questions relating to his party membership.

In the *Beilan* case the plaintiff, a schoolteacher in Philadelphia, refused to answer questions concerning his party membership. Subsequently, the Board of Education found that Beilan was professionally incompetent. The Supreme Court held that the Board of Education had the power to make such a determination. Moreover, the Court dismissed Beilan's defense that questions as to his party membership infringed upon his constitutional rights under the 14th amendment since it found that he was fired for incompetency rather than for refusing to answer the questions.

In re Anastaplo, rather than justifying the proposition for which it was cited seems to be the type of case to which the Department of Justice referred in the fourth sentence of the second paragraph of note (c); viz, a case involving an applicant's refusal to answer when such refusal was apparently made as a matter of principle. Anastaplo appeared before the Committee on Character and Fitness of the Bar Examiners of the State of Illinois. He refused to answer a number of questions of the committee on the ground that such questions infringed upon his rights. He declined to answer questions concerning, *inter alia*, his party membership. Collateral investigation by the committee disclosed no charges of any Communist membership, sympathy, or activity. The Supreme Court held that the bar association could put him questions pertaining to party membership and could since he did not reply thereto refuse to certify that he met the character and fitness requirements for admission to the bar without infringing on his rights under the 14th amendment.

Cronan v. *F.C.C.*, 285 F. 2d 288 (D.C. Cir. 1960), *certiorari denied* 366 U.S. 904 (1961), is, I believe, a case upon which the Department of State might rely in failing to process an application where an applicant had refused to answer questions concerning his membership in the Communist Party. That case involved an order dismissing an application of a radiotelegraph and radiotelephone license. The Commission based its order on the fact that the applicant had failed to answer questions concerning his membership in the Communist Party. The Committee held a hearing on the issue on whether or not the applicant had failed to answer the questions. The Commission found that he had failed to answer the questions and, therefore, denied the renewal of his license. The Court of Appeals for the District of Columbia affirmed the action of the Commission and the Supreme Court denied certiorari at 336 U.S.C. 904 (1961).

It is important to note in consideration of the *Cronan* case that the regulations under which the Commission operated specifically provided that the Commission could request further information to determine the qualifications and character of any applicant for a license and that failure to respond to its questions would warrant dismissal or denial of an application. It is on this point that the *Cronan* case is distinguishable from the case of *Graham* v. *Richmond* (1959), wherein the absence of similar regulations vitiated the action of the Coast Guard Commandant in denying a valid merchant marine document to the plaintiff. An appropriately drafted regulation should enable the Department of State to bring its action within the scope of the *Cronan* case and to avoid the difficulty which arose in *Graham* v. *Richmond*.

With respect to refusal to answer based upon the fifth amendment, the case cited by the Department of Justice is that of *Nelson et al* v. *County of Los Angeles*, 362 U.S.C. 1 (1960). The facts of that case were these: Nelson, a State employee, was ordered by a county supervisor to appear before and answer questions put to him by a subcommittee of the House on Un-American Activities Committee. Nelson did appear as directed but he invoked the fifth amendment and refused to answer the committee's questions. Thereupon, the county supervisor discharged him for insubordination. Upon review, an equally divided court sustained his discharge. In the matter of the discharge of Globe, a fellow employee,

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the Supreme Court held that the determination of the county supervisor that refusal by a county employee to answer questions before a congressional subcommittee would constitute insubordination and result in discharge was not susceptible to constitutional objection.

It would seem that *Nelson* is clearly distinguishable from any case that would confront the Department of State under the proposed regulation, for the courts have held that the right to travel is a constitutional right subject to most substantial protection. It seems unlikely that the Supreme Court would find itself bound by the *Nelson* case when faced with a first or a fifth amendment objection from a person who had been denied a passport.

It would appear more likely that the Court faced with the problem outlined above would repair to the rationale of *American Communications Association* v. *Douds*, 339 U.S.C. 382, and find that on balance the end which the Congress sought to achieve by the Subversive Activities Control Act with respect to the denial of passports to Communists outweighed the limitations on the first and fifth amendment rights with respect to the question of Communist Party membership. Moreover, it would likely find that the congressional conclusion with respect to the use of passports by Communist couriers was a reasonable one, as it found in *American Communication Workers* that a similar conclusion was reasonable and "designed to protect the public, not against what Communists and others identified therein advocate or believe but against what Congress has concluded they have and are likely to do again." 339 U.S. 382, 392–393.

Mr. CHAYES. As a matter of information, may I have a copy?

Mr. SOURWINE. I had planned to give a copy to Mr. Jones and ask him to convey it to the legal department so that we could talk about it. You would be handed it through Mr. Jones.

Mr. JONES. A transmission belt.

Mr. SOURWINE. Mr. Jones, in addition to Executive Order 10450 in regard to investigations of appointees in positions in the Department of State, are there any statutory requirements respecting investigations for loyalty and suitability? Is that a question—perhaps I should wait to ask that of Mr. Chayes.

Mr. JONES. I think it is a question for Mr. Chayes. I cannot answer that.

Mr. SOURWINE. All right. Now, are you satisfied with the record in the *Elizabeth Gurley Flynn* passport case?

Mr. JONES. I have not seen that. It would have been improper for me to even look at it.

Mr. SOURWINE. It would have been improper——

Mr. JONES. I think so, sir—it is an incomplete proceeding.

Mr. SOURWINE. We have talked about the Duimovich passports, and I won't go into that any further.

Are you familiar with the passport case of George Gessner?

Mr. JONES. No, sir.

Mr. SOURWINE. Are you familiar with the passport case of the so-called Berlin Mata Hari, Miss Hammerstein?

Mr. JONES. No, sir.

Mr. SOURWINE. Are you familiar with the passport case of the so-called Black Eagle of Katanga?

Mr. JONES. No, sir.

Mr. SOURWINE. Those are all section 316 cases—do you know what I am talking about?

Mr. JONES. Not by identification of that section.

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STATE DEPARTMENT SECURITY

TUESDAY, JUNE 12, 1962

U.S. SENATE,
SUBCOMMITTEE TO INVESTIGATE THE ADMINISTRATION OF THE INTERNAL SECURITY ACT AND OTHER INTERNAL SECURITY LAWS, OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:30 p.m., in room 2300, New Senate Office Building, Senator Thomas J. Dodd presiding.

Also present: J. G. Sourwine, chief counsel of the subcommittee; Benjamin Mandel, research director; and Frank Schroeder, chief investigator.

Senator DODD. I will swear you in, Mr. Lowenfeld.

Do you solemnly swear the testimony you will give here will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF ANDREAS F. LOWENFELD, OFFICE OF LEGAL ADVISER, STATE DEPARTMENT

Mr. LOWENFELD. I do.

Mr. SOURWINE. Mr. Lowenfeld, I think the full name is already of record.

Mr. LOWENFELD. Yes—middle initial F.

Mr. SOURWINE. You did participate in the hearing the other day when Mr. Jones was here, and Mr. Chayes. But I do not think we went through the usual introductory identification.

Would you give the reporter your present residence address and phone number?

Mr. LOWENFELD. I reside at 3407 Q Street NW., Washington, D.C.

Mr. SOURWINE. And your business address is the State Department?

Mr. LOWENFELD. State—Office of the Legal Adviser.

Mr. SOURWINE. You are No. 2 man in that Office?

Mr. LOWENFELD. No, sir; I am not. I am special assistant to the Legal Adviser. There are two Deputy Legal Advisers. I am not actually in the chain of command.

Mr. SOURWINE. You sometimes become Acting Legal Adviser?

Mr. LOWENFELD. No, sir; I do not.

Mr. SOURWINE. You never do?

Mr. LOWENFELD. No, sir.

Mr. SOURWINE. I thought you referred in your testimony the other day to the occasion when I think you said or referred to yourself as being Acting Legal Adviser.

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Mr. LOWENFELD. No, sir. I think at one time you asked me whether I had cleared a paper. I said I had seen it, but the formal clearance had been made by the Acting Legal Adviser. That was Mr. Meeker.

Mr. SOURWINE. Perhaps I had misunderstood.

When and where were you born?

Mr. LOWENFELD. I was born in 1930, in Berlin, Germany.

Mr. SOURWINE. May 1930?

Mr. LOWENFELD. That is correct.

Mr. SOURWINE. When did you come to the United States?

Mr. LOWENFELD. 1938.

Mr. SOURWINE. Your father and mother were born in Germany?

Mr. LOWENFELD. Yes, sir; they were.

Mr. SOURWINE. Are you a citizen of Germany?

Mr. LOWENFELD. No, sir; I am not.

Mr. SOURWINE. Are you a citizen of the United States?

Mr. LOWENFELD. Yes, sir.

Mr. SOURWINE. You acquired that citizenship through derivative naturalization, your parents having been naturalized November 9, 1943, in the southern district of New York?

Mr. LOWENFELD. Correct.

Mr. SOURWINE. Did you become a citizen by virtue of any oath of allegiance to the Government of the United States?

Mr. LOWENFELD. No, sir. That was——

Mr. SOURWINE. Did you ever make an election with respect to your citizenship as between Germany and the United States of America?

Mr. LOWENFELD. No, sir.

Mr. SOURWINE. Do you know what the German law is with regard to the citizenship of persons born in Germany?

Mr. LOWENFELD. Well, of course in my own case, being a Jew, I suppose I would have, as a matter of formal German law, lost nationality by virtue of the Nuremberg laws.

Senator DODD. How old were you when you came here?

Mr. LOWENFELD. I left Germany with my parents in 1933.

Senator DODD. When did they become citizens?

Mr. LOWENFELD. I was 13. And by the U.S. law, there is no question of an election or anything like that.

Senator DODD. I do not suppose that a man would know, if he was 13 years old, when his parents became citizens.

Mr. SOURWINE. No; I do not imagine he would, Senator. I just wondered if he knew what the German law was. I have been advised informally that the German law is a person born in Germany remains a German citizen unless released through proper application.

Senator DODD. Maybe that is the German law. But I think a 13-year-old youngster, whose parents were naturalized, would normally assume he is, too.

Mr. SOURWINE. I do not think there is any question about the fact Mr. Lowenfeld has U.S. citizenship.

Mr. LOWENFELD. The question has never been raised. I am not a dual citizen.

Senator DODD. I think several countries have statutes to the effect of dual citizenship. But I do not think that means a person who becomes a citizen here participates in it.

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Mr. SOURWINE. I just wondered if Mr. Lowenfeld had ever affirmatively had to make any election.

Mr. LOWENFELD. Of course I took an oath of allegiance upon entering the Army and Government service and so on.[1]

Mr. SOURWINE. I understand that. Now, as to your education, you have a law degree from Harvard University.

Mr. LOWENFELD. That is correct.

Mr. SOURWINE. What is your Federal employment record?

Mr. LOWENFELD. I was—civilian employment—I entered upon Government service on June 22, I believe, 1961, in the job that I now occupy, Special Assistant to the Legal Adviser.

Mr. SOURWINE. You had not been employed by the Government before that time?

Mr. LOWENFELD. Except in the military service.

Mr. SOURWINE. Were you an enlisted man?

Mr. LOWENFELD. I was an enlisted man.

Mr. SOURWINE. In the Regular Army?

Mr. LOWENFELD. In the Army. I was drafted—the Army of the United States.

Mr. SOURWINE. And you served there for how long?

Mr. LOWENFELD. Just under 2 years.

Mr. SOURWINE. When did you graduate from Harvard?

Mr. LOWENFELD. I graduated from Harvard College in 1951, from Harvard Law School in 1955.

Mr. SOURWINE. You graduated with honors, did you not?

Mr. LOWENFELD. High honors.

Mr. SOURWINE. Were you in the Order of the Coif?

Mr. LOWENFELD. I do not believe that order existed at Harvard—in any event, no, sir.

Mr. SOURWINE. You stood very high in your class.

Mr. LOWENFELD. Yes, sir.

Mr. SOURWINE. Were you ever, Mr. Lowenfeld, connected in any way with the CIA?

Mr. LOWENFELD. Not in any direct way. The reason that I hesitate in my answer is that I was connected with the Center for International Studies at MIT.

Mr. SOURWINE. That was during what period of time?

Mr. LOWENFELD. That was 1951—1952. And they had some kind of contract with the CIA. So that it is conceivable that I was cleared by them.

Mr. SOURWINE. Yes.

Mr. LOWENFELD. But I never formally worked for them.

Mr. SOURWINE. Did you know that the Center for International Studies was a CIA operation?

Mr. LOWENFELD. I was never formally told, but it became apparent.

Mr. SOURWINE. Was Mr. Rostow in charge up there when you were there?

Mr. LOWENFELD. He was acting, I guess—and then Mr. Millikan came. I worked for Mr. Rostow, yes.

Mr. SOURWINE. What was your position with him?

[1] The subcommittee later was informed that a certificate of citizenship was issued to Andreas Frank Lowenfeld under date of Jan. 16, 1948. In connection with the issuance of that certificate an oath of allegiance was administered.

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Mr. LOWENFELD. Well, I was a staff member. Originally there were only three or four staff members. I worked on various projects having to do with Russia and Eastern Europe.

Mr. SOURWINE. When you came to the Department of State, was there a waiver in your case, were you immediately employed, with a waiver of the security check?

Mr. LOWENFELD. No, sir. I got a letter or a phone call saying that I could have the job in March and I was not actually employed until June.

Mr. SOURWINE. There was no waiver.

Mr. LOWENFELD. No, sir, it was not requested.

Mr SOURWINE. Mr. Lowenfeld, we have a couple of loose ends here, and then we will get down to what will take a little longer.

What did you have to do with the conception and execution of the plan to get Mr. Struelens, the Congo representative, out of the country by lifting his visa?

Mr. LOWENFELD. Nothing.

Mr. SOURWINE. You never consulted with anybody about this?

Mr. LOWENFELD. No, sir. I first heard about the Struelens case in connection with the hearings here. And at that time I was asked by Mr. Chayes to kind of find out who the various people were who had been involved in the case and to get some of their information together, so I am in a general way familiar with the Struelens case.

Mr. SOURWINE. But you had not, before we held hearings, had anything to do with it at all; you were not knowledgeable with regard to Mr. Struelens?

Mr. LOWENFELD. No, sir. Later I once did talk with him. But that was much later—in February or March of this year—on the phone.

Mr. SOURWINE. You had nothing to do with the initial concept or suggestion of the plan to lift his visa?

Mr. LOWENFELD. No, sir; I did not.

Mr. SOURWINE. Mr. Lowenfeld, did you participate to any extent in the drafting of the new passport regulations?

Mr. LOWENFELD. Yes; I did.

Mr. SOURWINE. Would you say to a substantial extent?

Mr. LOWENFELD. Yes; I would.

Mr. SOURWINE. To what extent was there cooperation with the Department of Justice in the drafting of these regulations?

Mr. LOWENFELD. Well, I think perhaps I can tell you my role in this.

Mr. SOURWINE. It would be very helpful if you would.

Mr. LOWENFELD. There had been talks, both between the Passport Office and our Office, that is the Legal Adviser's Office, and apparently with the Justice Department ever since the Supreme Court decision of last June in the *Communist Party* case. I was not party to those.

About the middle of December or so, Mr. Chayes thought that he ought to take a personal and direct interest in them. And I was his arm for doing that—being his special assistant.

At that point, I investigated in our own office and I discovered there were memos floating around, and I thought we ought to move fast. And then together with one of the young people in our office

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I sat down and drafted, just in rough draft, what became the regulations. There were two or three of us who did that. We also at that time consulted with the Passport Office, with Miss Knight and Mr. Johnson. This was first just in a rough typewritten copy, and then we made various changes, five or six of us, in our office.

We did send—at the same time there were conversations going on with the Department of Justice, and we sent over a copy of the draft regulations to the Justice Department for their technical comments.

Mr. SOURWINE. Who did that go to—Mr. Yeagley?

Mr. LOWENFELD. I believe that went to the Office of Legal Counsel, Mr. Katzenbach's office. Now, I cannot remember exactly whether that was before or after the meeting, which I spoke about the other day. That is, there was a meeting which the Deputy Legal Adviser—and I do not know whether he was acting then or not—Mr. Meeker and I attended, with several representatives of the Justice Department, at which some of the statutory basis and so on was discussed, and at which a draft of what became the letter of January 5, which is in your record, was read by, I think, Mr. Katzenbach.

Mr. SOURWINE. That was the first you had seen of that draft?

Mr. LOWENFELD. That was the first I had seen of that draft. In fact, I did not know it was in existence, though I knew they were working on the problem.

Now, I am not quite sure whether it was before or after that we sent a copy of the stenciled version of the regulations over, as I say, for technical comments. They phoned various changes over to us. You know how it is when you prepare these things—change an "and" to a "but" and so on.

So to that extent, I would say, just to finish, that the letter was theirs. The regulations were ours. There is no question about that.

Mr. SOURWINE. The letter was prepared in Mr. Katzenbach's shop.

Mr. LOWENFELD. I believe that is right.

Mr. SOURWINE. Although it is signed by Mr. Yeagley.

Mr. LOWENFELD. Well, as I recall at that meeting there was somebody from Mr. Yeagley's office present. But I think your conclusion is substantially—you would have to ask them.

Mr. SOURWINE. Well, I want to ask you what you know. From what you have told us, it would appear the letter was prepared in Mr. Katzenbach's shop.

Mr. LOWENFELD. I believe that is right.

Mr. SOURWINE. Now, I want to get back into the question of this letter with Mr. Dutton's signature to Senator Dodd.

Here is the text of it as it appears in our records. We had some discussion of it at the session where you and Mr. Chayes were together.

You had the basic task of preparation of this letter, did you not?

Mr. LOWENFELD. Well, I suppose Mr. Chayes did. But, yes, I worked on it.

Mr. SOURWINE. Well, Mr. Chayes was not concerned with it until after there was a draft; isn't that right?

Mr. LOWENFELD. That is correct.

Mr. SOURWINE. And you prepared that draft.

Mr. LOWENFELD. That is correct.

Mr. SOURWINE. Now, at the outset, Mr. Chairman, because there is some confusion in the record about the question of when this com-

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mittee was informed the regulations were to be published—that is, what date we were given as the date it was intended to publish them—I would like to ask if the Chair is agreeable that we swear Mr. Leahy for the purpose of two questions on that subject—since he is the one that brought them up here.

Senator DODD. I do not think we have to swear Mr. Leahy. As a matter of fact, I do not think we have to swear any of these witnesses.

Mr. SOURWINE. We have been doing it with everybody else.

Senator DODD. I do not want it understood there is any doubt about your integrity.

Do you solemnly swear the testimony you will give will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF JOHN LEAHY

Mr. LEAHY. I do.

Mr. SOURWINE. Since this subject was mentioned, Mr. Leahy, have you had an opportunity to refresh you recollection?

Mr. LEAHY. Yes, Mr. Sourwine.

Senator DODD. I meant that as well for you, Mr. Lowenfeld. I just went through a formality here. I do not want you to understand that there is any question or doubt of your veracity.

Mr. LOWENFELD. Thank you.

Mr. SOURWINE. When was it you brought up those summaries for the committee?

Mr. LEAHY. To the best of my recollection, I brought up the summary and saw you and presented it to you on a Thursday.

Mr. SOURWINE. The 11th.

Mr. LEAHY. Which was the 11th—the day before they appeared in the Federal Register.

Mr. SOURWINE. And you told me at the time that it was intended to publish them on Monday, the following Monday.

Mr. LEAHY. I think my statement was to the effect that to the best of my knowledge, that it would appear in the Register on the following Monday.

Mr. SOURWINE. It was not a commitment. You were simply telling me all you knew.

Mr. LEAHY. That is right.

Mr. SOURWINE. And all I knew, and what I passed on to the Senators, is what Mr. Leahy told me. I wanted that in the record because this letter states—

> I believe Mr. Leahy, of my office, informed the Chief Counsel the intention was to put the regulation into effect with as much dispatch as possible.

The implication is that the statement we were told it would be put into effect on Monday was somehow wrong.

Was it intended by this letter, Mr. Lowenfeld, to indicate that there was anything wrong or in error when we said we had been told that they were to be put into effect on Monday?

Mr. LOWENFELD. No, sir. The object of this letter is simply to clarify the situation. What had happened—of course, none of us has had—I certainly had not had experience in the past in printing in the Federal Register. Miss Knight had told us—and of course she had had more experience in this—that it normally takes 3 or 4

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working days. Mr. Leahy either may have been there when she said that or I passed that information on to him. But at the same time we did, as the letter says, want to do it fast, and it proved possible to do so. So there was no, you know, attempt to——

Mr. SOURWINE. Why were you doing it so fast? What was the hurry?

Mr. LOWENFELD. Well, of course, there are a couple of reasons. The principal one was that we had a hiatus of 6 or 7 weeks already. Let's see. The Supreme Court denial—the denial for rehearing was October 9, I believe. The board published its order requiring registration on the 21st of October, to be effective 30 days thereafter. So that as of November 20, there was now a final order of the Court, and the statute was in effect. We had a couple of applications. You mentioned the name of one of the last hearing—the Duimovich case.

Mr. SOURWINE. Are you telling us the Duimovich case was pending prior to the 12th of January?

Mr. LOWENFELD. I do not know whether it was formally pending.

Mr. SOURWINE. Do you know when it was received?

Mr. LOWENFELD. It seems to me—you would have to check with Miss Knight to be sure. I have the feeling——

Mr. SOURWINE. You brought up the case.

Mr. LOWENFELD. Well, yes, I have the feeling that I had heard about the matter. It may have been a lawyer's inquiry rather than a formal application. But I had heard about the case before; yes, sir.

Mr. SOURWINE. And you say this case was pending, and that is why you were hurrying this thing?

Mr. LOWENFELD. If I may correct that. I am not sure—I am under oath—whether the word "pending" is right, because "pending" means there was a formal application.

Mr. SOURWINE. Do you know whether any applications were pending?

Mr. LOWENFELD. I had understood there were. And I had understood, as a matter of fact, that Miss Knight had originally been the one who had said we have got to move fast. Now——

Mr. SOURWINE. When did she say that?

Mr. LOWENFELD. We had a series of meetings with her back in December. She had brought an entire—she wanted to rewrite the entire passport regulations, not just the ones——

Mr. SOURWINE. She had moved for action long before December, had she not?

Mr. LOWENFELD. Well, that I do not—I understand there had been much earlier—under the last administration, there had been a move.

Mr. SOURWINE. But not under you. You had nothing to do with it.

Mr. LOWENFELD. Well, the first I had heard about it was about the middle of December, when Mr. Chayes called me in and said, "I want to watch this, and you watch this for me." It may have been—I have not read her testimony, so I do not want to appear to controvert her. She may well be right. I do not know.

Mr. SOURWINE. Well, let us just—we have some chronology here. It indicates that on June 12, 1961, Passport sent a memorandum to the then Acting Legal Adviser outlining pertinent portions, especially section 6, and requesting views about action to be taken with

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respect to pending applications, members who have passports, actions and procedures which should be followed when the law became operative.

Mr. LOWENFELD. Yes.

Mr. SOURWINE. It seems like a prudent thing to do—that was not too far in advance to begin to ask about the matter.

Mr. LOWENFELD. I agree with that. That is before I was in the Government. But that was, if I am not mistaken, just before the stay was granted by Mr. Justice Frankfurter. And I gather what happened was that the things were sort of let slide a little bit, as the pressure was off.

Mr. SOURWINE. That is right. There was another memorandum of June 22, 1961, from Passport advising that when the law became effective Passport would be prohibited, by penal sanctions, to issue passports to Communist Party members.

Then on October 10, the day after the petition for rehearing was dismissed, Passport issued a memorandum within its own jurisdiction to all personnel alerting them to the fact that passport renewal applications must be intercepted prior to any issuance or renewal as the case may be, and all cases to be referred to the legal division of the Passport Office for handling.

On October 24, Passport sent a letter to Mr. Yeagley, asking for his views about the withdrawal of passports from Communist Party members.

Mr. LOWENFELD. That is right. And that letter was not answered, that is the letter—although that was not drafted in our office—that letter was not answered until the 5th of January, although there were conversations in between.

Mr. SOURWINE. Yes. It was answered the same date as the other letter. And that has caused some confusion. You talk about the Yeagley letter of January 5—there were two.

Mr. LOWENFELD. That is correct.

Mr. SOURWINE. One was the letter answering this letter from Mr. Hickey, I believe.

Mr. LOWENFELD. Well, they really both are. But they are separate questions. That was one of the decisions that was reached at the meeting at Justice—to make them two separate letters.

Mr. SOURWINE. On November 1, Passport requested Immigration and Naturalization to withdraw the passport of Elizabeth Gurley Flynn.

On November 3, 2 days later, Mr. Chayes and Mr. Yingling, of Legal, advised Passport that Passport had no authority to withdraw the Flynn passport, it was a matter solely for the Department of Justice.

You had no participation in that.

Mr. LOWENFELD. I could not—I am not sure whether I did or not. I knew about it. I remember it came up on one Saturday. I do not think I participated in it. But I am not certain.

Mr. SOURWINE. November 30: Passport sent a memorandum to Mr. Chayes transmitting two lists of persons who appeared to be within the purview of title 50, United States Code, section 785.

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December 1: Passport sent a memorandum to Mr. Chayes recommending the withdrawal of passports issued to individuals on the national levels of the Communist Party leaderships.

December 7: They sent a memorandum to Mr. Chayes recommending that a statement be placed on all passport application forms, registration forms, and agency notices with respect to the law.

Mr. LOWENFELD. I think that was the first time I became active in it. I think Miss Knight brought that memorandum around personally and I was with Mr. Chayes, and we discussed that. We made small changes in the wording. And then we agreed to that.

Mr. SOURWINE. On December 7, there was a meeting in the Legal Adviser's Office.

Mr. LOWENFELD. Yes, sir.

Mr. SOURWINE. That was the first day you learned, I take it, that a redraft of passport regulations had been prepared and transmitted a year before by the Passport Division.

Mr. LOWENFELD. That is correct.

Mr. SOURWINE. Where had they been in the meantime?

Mr. LOWENFELD. Well, it is one of the peculiar—I know this committee from time to time is interested in the organization of the Department. They have their own legal office. It is the only part of the Department that has its own legal office. And while I am not certain that no one in our office of 60 lawyers knew about this, it was the first I knew about it. And apparently they had been submitted, and then withdrawn by the Passport Office.

Mr. SOURWINE. They had been withdrawn?

Mr. LOWENFELD. Well, I do not know why. You will have to ask Miss Knight.

Mr. SOURWINE. They were not being held somewhere in your office, were they?

Mr. LOWENFELD. No, sir. Miss Knight brought them in and put them down on the table. I remember that.

Mr. SOURWINE. Well, Miss Knight informed us in her chronology that they had been held in abeyance for over a year pending action by the Department.

Mr. LOWENFELD. I do not know what that means.

Mr. SOURWINE. All right. It was not in your office, anyway?

Mr. LOWENFELD. No, sir.

Mr. SOURWINE. Well, I think that clears up the question of when you first learned about the matter.

It does not leave the record absolutely clear as to whether you have any knowledge of any passport applications that were pending up to the time of the new regulations.

Mr. LOWENFELD. Well, I am not entirely certain on that. I just mention that as one of the considerations. My instructions were—and I think you perhaps should ask Mr. Chayes—my instructions were once the draft had been agreed on, and that was done at a meeting on Tuesday, the 9th, in the Secretary's Office, I was told "get them published as soon as you can."

Mr. SOURWINE. Well, I was referring to the question of this sentence which I believe you put in the letter. "There was thus a period in which persons possibly coming under the act were applying for

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passports with no regulations in effect under which the Department could deny them passports."

Mr. LOWENFELD. That is correct.

Mr. SOURWINE. Well, when you wrote that did you know whether it is true that there were applications for passports being made during this period of hiatus?

Mr. LOWENFELD. Well, there are always applications made. The Passport Office grants, I don't know, probably a million passports a year.

Mr. SOURWINE. I am talking about applications by persons who have been affected by this section of the act.

Mr. LOWENFELD. As to that, as a theoretical fact, I knew it. As I recall, Miss Knight had said on the basis of some FBI reports there was a list of several hundred—I do not remember the exact number—that presently held passports. You never know, of course, who is going to apply tomorrow. That is, there are, I suppose—Mr. Hoover says there 10,000 people that they think are Communists. Who knows—I do not know the figure.

Mr. SOURWINE. You did not have any particular instance in mind when you wrote this?

Mr. LOWENFELD. No, sir.

Mr. SOURWINE. And how about the closing words of that sentence?

Regulations in effect under which the Department could deny them passoprts.

The Department could have denied passports to a Communist without the new regulations, could it not?

Mr. LOWENFELD. Well, we had doubt about that, sir.

Mr. SOURWINE. You did have doubt about that?

Mr. LOWENFELD. In view of the Supreme Court cases, particularly *Kent* and also the *Greene* case, which as you know went on the fact of the specific and explicit chain of authority and regulation—we had doubt——

Mr. SOURWINE. You are familiar with the *Greene* case, that is *Greene* v. *McElroy*?

Mr. LOWENFELD. That is right.

Mr. SOURWINE. Go ahead.

Mr. LOWENFELD. I do not know for sure whether a denial not based on the regulation, and not providing for a hearing, would have stood up. We certainly had doubt about it. And we thought the right way to do it, and to sustain this kind of thing against challenge—it was clear that it would be challenged—was to have regulations properly issued.

Mr. SOURWINE. Mr. Lowenfeld, didn't you understand that Congress had passed a law which made it a crime for any official of the State Department to grant a passport to a person, knowing or having reason to believe that that person was a member of the Communist Party U.S.A.?

Mr. LOWENFELD. That is what the statute said; yes, sir.

Mr. SOURWINE. And you did not think that that statute was enough justification for refusal of a passport? You thought you needed a regulation before you could refuse a passport to a Communist?

Mr. LOWENFELD. Let me say first that the decisions and so on in this field were not essentially mine. They were those of the Attorney

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General and the Legal Adviser. But as I understand it, the point was there is some doubt as to the whole—as to the constitutionality of the entire provision, of the whole ability of the Congress to restrict——

Mr. SOURWINE. You think it is your job as an administrative officer to raise a question of the constitutonality of an act of Congress?

Mr. LOWENFELD. Permit me, if you would, sir, to just finish my sentence. It was felt that there is some doubt as to the constitutionality of the entire section 6, that it was our duty, as lawyers for the Department of State, to sustain the Department's ability to regulate travel in this way, and that it was therefore our responsibility, when we exercise the power under the statute, to do it in the way least likely to provoke a successful challenge.

Mr. SOURWINE. Mr. Lowenfeld, don't you understand that if there had been no regulation and the act had been followed, every Communist applicant would have been denied a passport? That is true, is it not? There might have been litigation subsequently. But every Communist applicant would have been denied a passport.

Mr. LOWENFELD. Well, I hesitate to answer the question because it begs in a way the issues. That is, who is a Communist applicant? If we had simply said anybody whose application for a passport—let me start that sentence again. If we had said that we will do a name check on any applicant for a passport; anybody who hit a flag, when we do a name check—that is what I understand they do at the field offices—will be denied a passport, and we will simply send him a letter saying "Dear Mr. So and So, you are not getting a passport." Nothing said about a hearing, nothing said about review. We would have had a lot of passport denials. We would have quickly had a lot of lawsuits. And the Department would not have come out of this very well.

Mr. SOURWINE. What is the worst that could have happened—that they would say the Department did not have authority to do that?

Mr. LOWENFELD. Well, I do not know what best or worst means, but I suppose that is a possible result; yes.

Mr. SOURWINE. Now, you issued regulations. Under those regulations don't you realize that most Communist applicants for passports are going to get passports?

Mr. LOWENFELD. I am really not one to judge that. Certainly Mr. Yeagley would be much more likely to judge that—be more expert at that.

Mr. SOURWINE. You did not realize this would be the effect of the regulations?

Mr. LOWENFELD. Let me say this. We certainly understood that there would be instances in which the FBI or other agencies of similar character would not have sufficient material that they could release to support a denial of a passport. In some cases they would have the material, and in some cases they do not.

As you know, at a certain point an informer becomes no longer undercover. And he may be an informer on eight people; if they decide to bring one case to trial, he is no longer undercover and then he can also be used, let us say, if the other seven apply for passports. So that I have no way of knowing, and I would suppose that Mr. Chayes did not, probably no one in the State Department did, as to the number of people.

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Moreover, we were careful to put in the regulations the provision that a preponderance of evidence, as in civil cases, but not all the rules of evidence governed the decisions.

Mr. SOURWINE. You were careful to put in the regulations a preponderance of evidence?

Mr. LOWENFELD. Let me not paraphrase the regulations. I must have a copy here somewhere.

Mr. SOURWINE. You mean you were careful to require by the regulations that there be sufficient evidence under the preponderance of evidence rule to convince a reasonable man that the person was in fact a member of the Communist Party? Is that a fair statement?

Mr. LOWENFELD. "Supporting the denial of a passport" is what it says. Now, let me perhaps amplify this a little bit, without disagreeing that it is a fair statement.

Supposing we had evidence that a man is or was a member of the Communist Party in April and the hearing, or the application takes place in August. There would be a need for an inference; we would suppose that the board or the hearing examiner could make that inference. You always have a problem in this kind of statute. You have it in the Taft-Hartley Act statute and so on—how do you know the fellow is a member today, if nobody testified to what he did today.

So we were conscious of all of these problems.

Mr. SOURWINE. That is the basic difference between the case of the man who is prohibited from making an application because he knows his own status as of any given moment, and the person who is prohibited from granting an application, because that person does not know the status of the applicant from moment to moment. Isn't that true?

Mr. LOWENFELD. That is true; yes, sir.

Mr. SOURWINE. Now, it has been stated all along here that because the Congress acted in one way, and on the basis of one criterion with respect to the prohibition against applications, the same criterion should be applied with respect to denial of passports. You see now since there is a difference why there should be a difference in the provisions of the Congress with respect to the criteria in the two instances?

Mr. LOWENFELD. I am afraid you went just too fast for me.

Mr. SOURWINE. I wonder.

Mr. LOWENFELD. Well, I do not mean to duck the question sir.

Mr. SOURWINE. Mr. Lowenfeld, the criterion of the statute with respect to the denial of passports was that a passport was to be denied if the officer who was charged with the granting or denial knew or had reason to believe that the applicant was a member of the Communist Party U.S.A.

Mr. LOWENFELD. Yes.

Senator DODD. We have a rollcall. I have to go over and vote.

Mr. SOURWINE. Very well, sir. We will wait.

(At this point Senator Dodd left the hearing room.)

(Senator Dodd reentered the hearing room.)

Mr. SOURWINE. Mr. Lowenfeld, turning to page 2 of this letter, the paragraph number 2, in stating the requirement that the decision on a passport application may be made only on the open record. It reads:

the regulations simply spell out the traditional requirement in Anglo-American jurisprudence that a person seriously injured by governmental action shall be

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entitled to face his accusers and that the investigator or prosecutor shall not be the judge. See *Greene* v. *McElroy*, 360

and so forth.

Is it your understanding that that is what *Greene* v. *McElroy* decided?

Mr. LOWENFELD. Well, as you know, this uses the law review format—"see *Greene* v. *McElroy*." I think it is fair to state that the *Greene* case discusses these traditions of Anglo-American jurisprudence, and certainly speaks favorably of them, and casts doubt upon any scheme—that is perhaps the wrong word—but on governmental action that seeks to avoid that.

I suppose the specific decision of *Greene*—it is not a holding. The holding is that the Secretary of Defense was not authorized explicitly by the President, acting pursuant to a statute, to promulgate the specific regulation.

Mr. SOURWINE. Well, why did you cite the *Greene* case here if it is not authority for what you stated?

Mr. LOWENFELD. Well, it was our thought that certainly an opinion by the Chief Justice commenting favorably on this—these traditions, is authority for our view that anything getting away from this raises grave constitutional questions. We did not say in this letter, nor did Mr. Yeagley say, nor have we said here, that a contrary rule would be unconstitutional.

As you know, the Supreme Court, faced with this, has ducked the question. It ducked it in the *Dayton* case.

Mr. SOURWINE. The Court, in *Greene* v. *McElroy*, specifically disavowed deciding that issue, did it not?

Mr. LOWENFELD. It has ducked it several times.

Mr. SOURWINE. It specifically disavowed deciding it in *Greene* v. *McElroy*.

Mr. LOWENFELD. I believe that is right; yes.

Mr. SOURWINE. You knew that when you cited the case this way.

Mr. LOWENFELD. That is right. It said we need not reach the constitutional question. I believe it is fair to say, Mr. Sourwine—this is not a precise quote, but the words about the traditional requirements of Anglo-American jurisprudence appear at the pages cited.

Mr. SOURWINE. Yes. They are dictum, pure and simple, are they not?

Mr. LOWENFELD. I have never known what a dictum pure and simple is. It is certainly advice of the highest Court. It is not a holding.

Mr. SOURWINE. Was this a unanimous Court decision?

Mr. LOWENFELD. No, sir.

Mr. SOURWINE. You know Mr. Justice Clark dissented, Mr. Justice Harlan dissented?

Mr. LOWENFELD. If you have that before you—I do not remember them all. Clark dissented; yes, I remember.

Mr. SOURWINE. Do you agree that the statement that there is a requirement for confrontation confuses administrative action with judicial trials?

Mr. LOWENFELD. I am not sure how to answer a question as to whether something that we have stated confuses. I certainly recognize the distinction between governmental and judicial action. I think, on the other hand, it is fair to say that the response of the Gov-

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ernment to a private citizen who says, "I would like to go abroad for private purposes," is governmental action.

Mr. SOURWINE. I did not say "governmental." I said the difference between the action involving a criminal prosecution and administrative action.

Mr. LOWENFELD. Yes, there is a difference, no question about it.

Mr. SOURWINE. You are aware that Mr. Justice Clark said the decision of the majority in the *McElroy* case and the dictum to which you refer confused administrative action with judicial action.

Mr. LOWENFELD. Oh, yes—Justice Clark said that.

Mr. SOURWINE. Do you agree with that? That was in connection with the right of confrontation. Mr. Justice Clark's view was that the right of confrontation is a right in a criminal action, not a right in an administrative action.

Mr. LOWENFELD. I think, sir, that it is difficult and perhaps not appropriate for me to comment—I did read both the majority and the dissent. And this was one of the cases which both the Justice Department and the State Department thought was relevant to consideration of this. I do not think I ought to say whether I personally agree or disagree with the decision in *Greene* or——

Mr. SOURWINE. I meant as a legal officer for the Department, as the man who wrote this letter.

Mr. LOWENFELD. Exactly. I am not—I think I would prefer not to say which way I would have voted on the decision.

Mr. SOURWINE. There is a practical reason, is there not, why there should not be a requirement of confrontation in administrative proceedings?

Mr. LOWENFELD. Well, I can see arguments in both directions. I would have thought that the *Greene* case, which involved a defense contractor, might—the decision in which the *Greene* case might jeopardize the security of the country perhaps more than the passport application of a private individual.

Mr. SOURWINE. I am talking about a practical matter. What I am trying to get at is this: The administrative agencies, by and large, do not have the subpena power. Not having the subpena power, they cannot provide the confrontation. Not being able to provide it, when by regulation they require themselves to provide it, they stultify themselves. Isn't that true?

Mr. LOWENFELD. Well, I think there is quite a bit in what you say.

Mr. SOURWINE. Hasn't the State Department found that to be true under these very passport regulations?

Mr. LOWENFELD. I was about to say we would hope, if it is appropriate, let us say it here—we would hope that the passport hearings would be given the right to compel witnesses to testify; yes.

Mr. SOURWINE. You are not recognizing that there is an error in the regulations; you want the regulations to stand and you want the matter to be cured by a congressional grant of the subpena power to the State Department?

Mr. LOWENFELD. No. I do not consider—and again let me state that I am a small cog in this wheel, and not the author of the policy.

Mr. SOURWINE. Well, you, speaking of the Legal Department, wrote the passport regulations which required the State Department to do something that it had no power to do. Isn't that true?

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Mr. LOWENFELD. No. We have been able to conduct a hearing, Mr. Sourwine. We have been able to get witnesses, documents, and so on. It has happened that we have not gotten—we have had some reluctant witnesses.

Mr. SOURWINE. You had arranged for certain witnesses to appear.

Mr. LOWENFELD. Yes.

Mr. SOURWINE. And those witnesses, namely, a New York Times reporter and an Associated Press reporter, either decided they would not appear or were told by their employers not to appear; isn't that true?

Mr. LOWENFELD. That is true.

Mr. SOURWINE. Do you know which?

Mr. LOWENFELD. I know the Times reporter—and I do not know the name of the Associated Press reporter. As you know, those hearings are conducted by the Passport Office and not by our office. I have never read the transcript.

Mr. SOURWINE. I understand.

Mr. LOWENFELD. I do know the Times reporter, yes. And I remember there was an AP reporter.

Mr. SOURWINE. Well, do you know whether the Times reporter refused to appear, or was he instructed not to appear?

Mr. LOWENFELD. I believe he consulted with the publisher, and I was a little bit unclear as to which it was finally. That is, whether he wanted to come and the publisher said no, or whether he did not want to come and the publisher said, "Well, you do not have to." I do not know which. But he did consult with them, and it was decided not to.

Mr. SOURWINE. The State Department could not make him come, so you had to get different witnesses.

Mr. LOWENFELD. That is true.

Mr. SOURWINE. And the net result is that the only witnesses you can produce against a passport applicant are witnesses (1) whom the Justice Department is willing you shall produce, and (2) who are willing to come. Isn't that true?

Mr. LOWENFELD. Yes, sir.

Mr. SOURWINE. So that under the regulations, as a practical matter, you cannot deny the passport unless you have witnesses who are not confidential informants of the Bureau and who are willing to come, who can, under your regulations, make a case which, by the preponderance of the evidence, would convince a reasonable man that the applicant is a member of the Communist Party, U.S.A.

Mr. LOWENFELD. We do not require live witnesses. That is, if a person, for example, has consistently written for the Daily Worker, if we have a record showing that he traveled to this or that meeting of the Communist Party here or abroad, something like that—there are other ways besides live, reluctant witnesses that we could establish a person's membership in the proscribed organization.

Mr. SOURWINE. You mean it is possible to establish membership in the Communist Party without a live witness?

Mr. LOWENFELD. I would suppose it could well be possible; yes.

Mr. SOURWINE. Do you think writing for the Daily Worker is proof of membership in the Communist Party?

Mr. LOWENFELD. I think it is evidence thereof.

Mr. SOURWINE. It is evidence tending to show, isn't it?

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Mr. LOWENFELD. Yes.

Mr. SOURWINE. Attendance at Communist meetings—is that proof of membership in the Communist Party?

Mr. LOWENFELD. Again, I think it is supporting evidence toward such a conclusion. I would have to—it is very hard to discuss evidence in the abstract. It depends how long ago it was, and so on.

Mr. SOURWINE. Perhaps we are getting a little afield, Mr. Chairman. The time being what it is, I will go forward.

You say in the last half of paragraph 2 of this letter, the numbered paragraph 2 on page 2:

> The Board of Passport Appeals will consist of senior Department officials outside the Passport Office who will have had no prior contact with the case and will thus generally have no knowledge about the applicant which they would have to forget"?

What do you mean "have no knowledge about the applicant which they would have to forget"?

Mr. LOWENFELD. Well, there was—I believe Senator Dodd's letter talked about——

Senator DODD. Brainwashing.

Mr. LOWENFELD. Brainwashing, here. He said in his letter:

> The Passport Office, passport officials, and even the Secretary himself are told that they must forget what they know about an applicant.

Mr. SOURWINE. Well, they are, aren't they? Your point here is you are going to appoint people who never knew anything, so they would not have to forget. Your letter supports what Senator Dodd said, doesn't it? That the regulations require them to forget, if they know.

Mr. LOWENFELD. The fellow who decides will normally not know, except what he hears on the record. It is the same kind of thing as, you know, that you have in court cases all the time.

Mr. SOURWINE. In other words, you are going to pick for this Board of Review, Board of Passport Appeals, people who know nothing about the case.

Mr. LOWENFELD. We do not ask them that. We have a permanent Board.

Mr. SOURWINE. And then you are only going to show them part of the evidence.

Mr. LOWENFELD. No, sir. We have a Board which is not made up of people in the Passport Division. It may be a Deputy Assistant Secretary for European Affairs, or it may be, let us say, somebody of equivalent rank. We will have people who are normally not in this part of the State Department.

Mr. SOURWINE. It isn't a matter of normality, is it?

Mr. LOWENFELD. They will not have seen the passport files, the security files.

Mr. SOURWINE. You say:

> Hearing officers in the Passport Office will also be chosen among persons who have had no previous acquaintance with the applicant's case. There will thus be no administrative brainwashing at any level.

Mr. LOWENFELD. As you know, in the one case we have had so far, we borrowed an examiner from the Power Commission, I guess it was. Now, he may or may not have heard of the lady. He probably did. But he had not seen any of the files. And he said, "I want to

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see the record." The Government presents whatever evidence it has, witnesses, documents, and so on which can be placed on the record. There is a reporter there to take it down. And on the basis of this and the evidence on both sides he makes a decision.

Now, he is not told to forget anything.*

Mr. SOURWINE. I understand this. Now you are talking about the Elizabeth Gurley Flynn case, are you not?

Mr. LOWENFELD. I was.

Mr. SOURWINE. Which is a passport-revocation case. This letter is talking about cases to grant passport applications.

Mr. LOWENFELD. I suppose it would be the same in every way. It is hard to see any difference between an application and a revocation on this issue.

Senator DODD. This interests me. As I understand it, the regulation or the law, rather, states that the Secretary shall not issue a passport to anyone whom he knows to be a Communist.

Mr. SOURWINE. That is right—or has reason to believe is a Communist.

Senator DODD. I do not think it is very hypothetical to suggest that the Secretary of State might know of an applicant whom he knows or believes is a Communist. How can he shed the knowledge by assigning his task to someone else—whether he is a Federal Power Commission examiner or anyone else?

Mr. LOWENFELD. He does not shed the knowledge. The words "know" or "reason to believe" are construed, and they were construed in the advice from the Justice Department as meaning knowledge or reason to believe on the basis of a record.

Senator DODD. However he has his knowledge—the basis of the record or any other way, it is still his knowledge, is it not? How does he get rid of it? Supposing the Secretary of State had read the record?

Mr. LOWENFELD. Well, the Secretary or his delegate can properly consider that he does not have the knowledge or reason to believe which the statute makes a condition for the requirement that he deny a passport.

Senator DODD. I am just trying to understand it. To me, anyway, it appears that if I have knowledge—and it seems to me highly probable if I was Secretary of State I would have knowledge concerning some cases—I am somehow called upon under these regulations to divest myself of that knowledge. And it just seems to me utterly impossible so to do.

Mr. LOWENFELD. The question is how does the state of a man's mind become transmuted into a record upon which formal governmental action can be taken? And the answer is we do not psychoanalyze the Secretary or the issuing officer. We say put it on the record. That is the theory of it.

Mr. SOURWINE. That is the theory of the regulations.

Mr. LOWENFELD. Yes. And the theory of the Justice Department advice.

*EDITOR'S NOTE: It appears Mr. Lowenfeld overlooked the point that Senator Dodd was talking about "passport officials," whereas the hearing examiner will not in any case be a passport official.

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Mr. SOURWINE. It is not the theory of the law. The theory of the law is that if the responsible officer knew or had reason to believe that the applicant was a Communist, that officer would deny the passport. The applicant would then be left to whatever recourse he had in court. If he raised the question of the defense, the officer who had acted or refused to act could testify with respect to the state of his or her knowledge or belief.

Senator DODD. Isn't it possible to have knowledge of something and at the same time find it impossible to demonstrate as a matter of proof required by the law?

Mr. LOWENFELD. Yes, sir; it is.

Senator DODD. Well, then, what would you say about such a situation? Suppose I were the Secretary of State and I had knowledge which I could not demonstrate within the requirements of the law. What then should I do?

Mr. LOWENFELD. You should not, on that basis, deny to an individual citizen a right which is a constitutionally protected right. That does not mean you have to appoint him as your Under Secretary or even give him a job in the Department or buy his goods or any of those things. But it means that for this kind of situation you should not act upon this unprovable knowledge.

Mr. SOURWINE. Is the right to have a passport a constitutionally protected right?

Mr. LOWENFELD. I would suppose the *Kent* case suggests that—particularly if you take it together with the provision in section 215 of the Immigration and Nationality Act, which makes it a crime to travel without one outside of the Western Hemisphere.

Mr. SOURWINE. Well, the *Kent* case may suggest it to you. But that was an opinion by Mr. Justice Douglas, and his holding was that there was no delegation of authority to withhold passports. And he said, "Any act of Congress purporting to do so would raise grave constitutional questions." But that is not a decision, is it?

Mr. LOWENFELD. I did not bring the case with me. I believe there is a statement——

Mr. SOURWINE. Page 129:

> Thus we do not reach the question of constitutionality. We only conclude that United States Code 1185 and title 22, United States Code, section 2115 do not delegate to the Secretary the kind of authority exercised here.

He said:

> The only law which Congress has passed expressly curtailing the movement of Communists across our borders has not yet become effective.

Mr. LOWENFELD. If you permit me for a moment—I am sorry I did not bring the case with me. As I understand it, you can have a constitutionally protected right and still have certain restrictions.

For example, you have a constitutionally protected right to free speech, but we all know there are limitations on that. And I take it that what the Court did not decide in *Kent* is whether the Internal Security Act has or could constitutionally have restricted the right.

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But the fundamental—perhaps you ought to ask Mr. Chayes—he is the Legal Adviser. I just work there.

Senator DODD. Isn't this the position? Your position is that the word "knowledge" when used here is the knowledge of the law—I mean the knowledge required by law.

Mr. LOWENFELD. Yes.

Senator DODD. That is what you are saying.

Mr. LOWENFELD. Yes.

Senator DODD. I am not arguing with you. I just want to make clear that I understand you.

Mr. LOWENFELD. That is right.

Senator DODD. And that is the thinking behind it.

Mr. SOURWINE. At the bottom of page 2 in this letter you say:

It is true that there may be circumstances in which passports are issued to Communist applicants. If they use the passports, they are, of course, liable to criminal prosecution under section 6(a) of the act.

In other words, you are going to give them a passport and then prosecute them for using it?

Mr. LOWENFELD. Well, of course, the prosecution is not in the hands of the State Department. But at that point, you see, again to prosecute them you would have to surface the evidence.

Mr. SOURWINE. Of course you would. It is perfectly clear. But this letter does not make it clear.

Mr. LOWENFELD. All that that suggests there is by issuing a person a passport under the circumstances we do not give him a license to go ahead or an immunity from the sanctions of section 6.

Mr. SOURWINE. Mr. Lowenfeld, I am leaving the subject of that—with the chairman's permission.

Senator DODD. Yes. I may say it is interesting to me. I think I understand the thinking of Mr. Lowenfeld. I am not sure at all I agree with it, but I understand it.

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STATE DEPARTMENT SECURITY

TUESDAY, JUNE 19, 1962

U.S. SENATE,
SUBCOMMITTEE TO INVESTIGATE THE
ADMINISTRATION OF THE INTERNAL SECURITY ACT
AND OTHER INTERNAL SECURITY LAWS,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:50 a.m., in room 2300, New Senate Office Building, Senator Roman L. Hruska presiding.

Also present: J. G. Sourwine, chief counsel of the subcommittee; Benjamin Mandel of the subcommittee staff; Frank Schroeder, chief investigator.

Senator HRUSKA. Do you solemnly swear that the testimony which you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CHAYES. I do.

Mr. SOURWINE. You have already been identified, as the head of the legal section of the State Department.

Mr. CHAYES. I am the Legal Adviser to the State Department, yes, sir.

TESTIMONY OF ABRAM CHAYES, LEGAL ADVISER, DEPARTMENT OF STATE

Mr. SOURWINE. And what do you call your office?

Mr. CHAYES. The Legal Adviser's Office, or the Office of Legal Adviser. It is a bureau.

Mr. SOURWINE. I was just going to ask you if it didn't in fact have the status of a bureau.

Mr. CHAYES. That is right, sir. And I have the rank of an Assistant Secretary.

Mr. SOURWINE. Yes, sir.

I don't want to go back and cover material that we have already discussed. But for purposes of continuity, I will ask, I think, an opening question which I believe was about the last question asked you the last time you were here.

We were discussing, of course, then—and I mean this question now in connection with the discussion of the new passport regulations of the State Department. And this is a hypothetical question.

Where officials of a particular department in the executive branch are attempting to justify a course of action taken by them on the ground that such course of action was required by a legal opinion from

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the Department of Justice, is it proper, pertinent, and germane to show, if it be the fact, that these officials themselves or some of them participated in the drafting of the Department of Justice letter and approved its text before it was signed and formally transmitted?

Mr. CHAYES. Well, I think it is perfectly proper for this committee to inquire about the relations between our department and the Department of Justice in the development of legal opinions for our guidance. But I would add, as I think I did last time, that the view of the construction of the statute upon which we have been proceeding has been a view that the Justice Department officers who considered the matter, and I and my staff reached independently, and there was no problem of adjusting any differences in view.

Mr. SOURWINE. I believe you said that you independently reached an identical conclusion with the Department.

Mr. CHAYES. Yes sir.

Mr. SOURWINE. So that your position is that the action taken by the Department is not required or commanded by the Department of Justice, but is an action based on the determination of the Legal Adviser's Office, as to what should be done.

Mr. CHAYES. Well, my position is that the Department of Justice told us what its view of the law is, that corresponded with our view of the law, and so there was no problem of compulsion one way or the other.

Mr. SOURWINE. I understand.

Mr. CHAYES. We were proceeding on an informal view of the requirements of the law within the administration.

Mr. SOURWINE. But the actual fact is, is it not, that there was consultation about this, there was joint consideration, there was agreement. It wasn't a case of you in your ivory tower and the Department of Justice in its ivory tower arriving at the identical conclusions independently.

Mr. CHAYES. By no means. You are perfectly correct in saying that from the beginning of our consideration of this problem we consulted the Department of Justice officials, who have responsibilities in the matter, and discussed this matter with them.

Mr. SOURWINE. Did you read the letter of Mr. Yeagley, of January 5 of this year, as promising that there would be no prosecution of any State Department official under section 6 of the Internal Security Act provided the official excluded from all consideration all matters of fact or evidence which could not be put on a public record?

Mr. CHAYES. I don't believe this is a promise in the sense that Mr. Yeagley or the Department of Justice undertakes to do so. Moreover, I don't think Mr. Yeagley or the Department could make a promise, at least which was binding upon their successors. But I do believe that the statement in the letter, plus the advice which we, on our own, gave our officials, would make it very difficult to prosecute a State Department officer who had acted in accordance with that legal advice.

Mr. SOURWINE. The Department of Justice could not, by letter of an Assistant Attorney General, suspend the effect of a statute.

Mr. CHAYES. That is correct; it could not.

Mr. SOURWINE. Nor could the Department of State give immunity to one of its employees from provisions of a statute.

Mr. CHAYES. That is correct; it could not.

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Mr. SOURWINE. Do you think that intent to violate is an element of the crime under section 6 of the Internal Security Act?

Mr. CHAYES. As you know, problems are very, very difficult and complicated in connection with statutes of this kind. But obviously, as in—by far the greater part of criminal offenses, the mental element is an element in the offense. Now, just what the mental element is that is required here, I wouldn't undertake to say now in advance of a court decision. On the other hand, I have advised my own clients in the Department that they may proceed on the basis of these opinions.

Mr. SOURWINE. Well, Mr. Chayes, isn't this the type of case involving a specific prohibited act in which the only intent necessary for the commission of the crime is the intent to perform the act?

Mr. CHAYES. I would not—I wouldn't want to get into an argument about that now. I myself think not. That is, I think if a public officer proceeds on the basis of this advice, and assuming for the moment that the advice is not that far out of line, he has not committed a crime. I mean if the advice is not palpably erroneous.

Mr. SOURWINE. Well, suppose the advice is palpably erroneous.

Mr. CHAYES. Well, obviously, you know as well as I do there are cases concerning the extent to which reliance on the advice of counsel is a defense to a criminal prosecution. Mostly these cases arise—I don't know any that arise in connection with public officers, but some certainly have arisen in connection with private parties.

Mr. SOURWINE. Did you ever know of such a case to arise in connection with a statute which prohibited a particular act?

Mr. CHAYES. Oh, yes. Well, I don't know of any of the cases in detail now. But I am sure—I am not sure—I could undertake to look them up for the committee if you choose.

Mr. SOURWINE. You are saying, in other words, that the advice of an attorney to an individual that he may safely perform an act which a law specifically proscribes can be a protection to the client in the performance of the act?

Mr. CHAYES. Well, you say which a law specifically proscribes, and that is really the issue here. Does the law specifically proscribe the act that the attorney has advised him that he may proceed with.

All I am saying—and I think the state of the law is this—that a client is not entitled to rely on the advice of his attorney on all matters. That is, there will be instances—you can imagine a lawyer saying "well, you may draw your gun and pull the trigger and kill the man across the table from you." The client is supposed to be able to say to the attorney "well, that just isn't so. I know better."

But within a fairly broad range on matters of interpretation such as this, it seems to me that the law would support the fact that where the client acted upon the advice of his attorney, which is not palpably unreasonable, the mental element necessary to create a crime is lacking—even if the attorney's advice should turn out in the end, or construction of the statute should turn out in the end to be erroneous.

Mr. SOURWINE. Well, I think that states your position very clearly.

Would you say that if the attorney's advice is plausible, the client may take it with impunity?

Mr. CHAYES. I say if it is not palpably unreasonable. I suppose plausible means much the same thing. I am not—I haven't examined

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the cases recently, and I wouldn't try to accurately define the boundary between permissible reliance and impermissible, except that I think this is within the boundary.

Mr. SOURWINE. Well, Mr. Chayes, would the reverse of that be true? That if the client didn't believe the attorney was right, he couldn't rely on his advice?

Mr. CHAYES. Well, I don't know that that has ever been considered, or whether——

Mr. SOURWINE. Well, consider it now.

Mr. CHAYES. Well, I think part of this is involved—I mean, what you want to do is see what the court cases say.

I am not sure that the client himself, not an expert and not having the qualifications necessary to make this kind of judgment—I am not sure that the state of his mind is relevant, within the limits of plausibility or reasonableness.

Mr. SOURWINE. Well, Mr. Chayes, if intent is the element we are talking about, why isn't the state of mind of the client or actor the most important factor?

Mr. CHAYES. The state of mind in terms of his believing or disbelieving the attorney's advice within the realm of reasonableness seems to me not to be relevant because the client in that situation understands that he is not qualified in the same way that the attorney is to deal with this. He is relying on the attorney for judgment.

Mr. SOURWINE. Why couldn't the client then, in the case of the attorney who says "you may draw your gun and shoot the man," why can't he draw the gun and shoot?

Mr. CHAYES. I said within the elements of reasonableness. Because beyond some limit of, as you call it, plausibility, and I have called it palpable unreasonableness—beyond that we talk of the client being responsible for his own judgment.

Mr. SOURWINE. As a matter of fact, Mr. Chayes, assume we had the case of a man who wanted to perform a certain action in the transactions of stock deals, and his attorney said the law appears to say you can't do this, but if you do it this way I say you can. The lawyer is wrong.

The man in good faith does it. Nevertheless he is going to be guilty of an offense, is he not?

Mr. CHAYES. It all depends. I would have to see exactly the circumstances. But there can be circumstances in which the attorney explains to the client that he is approaching very close to the line, and he is taking certain risks. As you know these matters are not black and white, and if the client is told that we are trying to avoid the law or evade the law in this way, and knows that that is the scheme, then he may be in a different position than if there was never that question in the first place.

Mr. SOURWINE. Have you advised your clients in the State Department that they are running pretty close to the edge or may be in trouble in connection with——

Mr. CHAYES. No, sir; I have not. Nor do I think they are.

Mr. SOURWINE. Now; let's assume this case, Mr. Chayes. Assume the case of a client to whom his or her attorneys advice seems unreasonable, who is satisfied that any educated person who can understand

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the English language knows that the law prohibits a certain act, and who does not believe the attorney is correct in stating that the act may be performed with impunity. If that client performs the act, on the attorney's advice, can he or she claim the attorney's advice as a protection?

Mr. CHAYES. And the attorney's advice turns out to be wrong in the end?

Mr. SOURWINE. Yes.

Mr. CHAYES. Well, I would say a person of that kind, having that view of the law, would be entitled to ask to be relieved of responsibility in acting—that is, to act in that situation only under the direction of a superior or something of that kind—if I were advising that person, let's say, I would advise that person to insist that when he acted in such a situation, he should get an order from a superior. And I think—again, as we know, the defense of acting under orders —doesn't cover everything. But in this kind of situation, I think if the person registered his objection and were directed by a responsible superior, nonetheless, to go forward, the person would not be guilty of crime.

Mr. SOURWINE. You skipped a step, have you not? Instead of directly answering my question, you applied it to the framework of your own responsibility under passports, which is a natural thing. The actual answer to my hypothetical question, is it not, is that such a person would not have the reliance upon the attorney's advice.

Mr. CHAYES. I would say—again, I think this is quite an interesting question, and I don't know of any cases on it. But I wouldn't think that the person who failed, feeling as you have described, but nonetheless failed to, for one reason or another—failed to get an explicit direction to act in the particular case—I wouldn't say her case before the court would be hopeless. I think——

Mr. SOURWINE. You are applying it to a specific individual again. There wasn't any problem of directive in connection with the question as I asked it.

Mr. CHAYES. No. What I am saying——

Mr. SOURWINE. You are getting to the point that if there is a subservience of some sort, administratively or otherwise, employment or duty, and an order, that there is then an exculpation or a justification. I am not discussing that at the moment.

Mr. CHAYES. Well, I would say even in the private situation, where the lawyer gives advice, which turns out to be reasonable advice—we start out with the proposition that it is somehow within these limits——

Mr. SOURWINE. The client thinks it is unreasonable.

Mr. CHAYES. But the client believes that it is unreasonable. I don't think the client's case is hopeless if the client then acts on the lawyer's advice, by any means. It does seem to me that, in a thoroughly private case, where the client is under no compulsion to act, it is a fair question to the client who says "well, I thought the lawyer's advice was unreasonable, but he told me to do it anyway"—"well, why did you act if you thought the advice was unreasonable."

But in the situation where there is some kind of compulsion, or where the client or where the person acting can secure a directive, then it seems to me all of that fades out.

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Mr. SOURWINE. We will get to that in just a minute. I think I understand your position on it. But what is the difference between the case as I just cited it, as a hypothetical case, and the case you suggested of the lawyer who tells the client he can draw the pistol and shoot the man across the table. In both cases, the client thinks—to him, knows, that the advice is unreasonable. In both cases, it turns out the lawyer was wrong.

Mr. CHAYES. Well, I just think the law has often drawn distinctions between judgments made as to advice which a court, or as to a situation which a court later decides is reasonable, as opposed to the situation in which it says it is unreasonable. I am not saying necessarily that the result would be different. I simply say that the case is a different one, and it is an easier one for the defendant—if the lawyer's initial advice was reasonable—because these are kinds of distinctions that courts love to draw.

Mr. SOURWINE. Now, your point that the action which might otherwise be illegal may not be illegal if it is done under orders from higher authority—would these orders need to be in writing?

Mr. CHAYES. Oh, I am not sure that that is necessary. Obviously, the questions of proof occur, questions of how strongly the orders were conveyed, and so on—all of those things are easier to deal with if the orders are in writing. But I should think an oral—assuming that it could be shown—an oral directive by a person having authority to give the directive would be effective to exculpate the officer who is acting.

Mr. SOURWINE. Now, in such a case, who would be responsible, under the law, for the violation of the statute if there were a violation?

Mr. CHAYES. If there were a violation, and so on, I assume that the responsible official who gave the order would be the violator.

Mr. SOURWINE. In other words, in the case of a passport, which under the new regulations is issued by a directive signed by an Assistant Secretary of State, the Assistant Secretary of State would be responsible if anybody is.

Mr. CHAYES. Oh, yes. Maybe is——

Mr. SOURWINE. The person below him, who acts in a clerical capacity, even though his or her position may be higher than clerical, under this order, acts in a clerical capacity.

Mr. CHAYES. Ministerial.

Mr. SOURWINE. Yes, that is a better word—in a ministerial capacity—would not be the actor under the statute.

Mr. CHAYES. Would have no responsibility.

Mr. SOURWINE. Would have no responsibility for the act. In other words, the act would be performed in the contemplation of the law by the person who ordered it.

Mr. CHAYES. Right. Now, again——

Mr. SOURWINE. Suppose the Assistant Secretary, in his order, said by direction of the Secretary of State. Would that be enough to inculpate the Secretary of State?

Mr. CHAYES. Well, again, it is a very thin set of facts. If that were the only involvement of the Secretary of State, perhaps it would not be. Perhaps the Secretary of State himself would have to have

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some knowing involvement. There is not quite unauthorized use of "by the Secretary" because the Assistant Secretary presumably has some authority to sign for the Secretary.

But when you come to matters of crime, I suppose the Secretary could not be made to commit a crime without his knowledge.

Mr. SOURWINE. Now, I think I would know why you used the word "she" a moment ago. It is because you are entirely familiar with the fact that Miss Frances Knight, who heads the Passport Division, has made it clear in writing that she considers the new regulations unreasonable, and that she feels she would be committing a crime if she issued a passport, and she has asked that she be specifically instructed if there is to be such an issuance.

Mr. CHAYES. I wouldn't have used the word "she" except that you said he or she in asking the question, and that recalled to my mind the problem with Miss Knight. Yes; I think Miss Knight has asked for a specific instruction, and I don't think there is any problem about giving her one.

Mr. SOURWINE. You assume she will have it in each case.

Mr. CHAYES. I think we have already provided that she will have it in each case.

Mr. SOURWINE. And your legal opinion is that this exculpates her from any possible prosecution under the act.

Mr. CHAYES. Yes.

Mr. SOURWINE. Now——

Mr. CHAYES. Even if my legal opinion on the meaning of the act is wrong.

Mr. SOURWINE. Now, Mr. Chayes, is it possible to brainwash a man by administrative order?

Mr. CHAYES. I think we had that question last time.

Mr. SOURWINE. We did.

Mr. CHAYES. I don't think it is possible to brainwash a man by administrative order; no.

Mr. SOURWINE. And I think you said that you did not think thought control by administrative order was either possible or desirable.

Mr. CHAYES. I think I said that. I don't think either of those things is involved here.

Mr. SOURWINE. You agree that it is not possible by administrative order or by regulation to control what a man believes.

Mr. CHAYES. No; it is not possible to control his subjective belief; that is correct.

Mr. SOURWINE. Now, we were discussing, I think, when we were interrupted, the meaning of the phrase "reason to believe."

Mr. CHAYES. Well, I think we had had a long discussion of it, yes sir.

Mr. SOURWINE. You think that has been adequately covered in your previous testimony?

Mr. CHAYES. I think it has, sir. As I said, I think at the end, to Senator Hruska, it was pretty clear that I had not convinced him. But I think I had made as full an exposition of our position as was possible, although I am glad to respond to any other questions you may have.

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Mr. SOURWINE. I think you had indicated that you had or took responsibility for the new passport regulations, although the drafting had been done in your office by others.

Mr. CHAYES. Well, let me say I saw the transcript of Mr. Lowenfeld's testimony on that point. And while I don't want in any way to controvert it, I would like to clarify it for the committee. It is true that Mr. Lowenfeld put the words down on paper that resulted in the first draft. It is not true that I did not consider the matter or consider the issues until a draft was before me. In fact, we had discussed the question very thoroughly. I had discussed it not only with Mr. Lowenfeld, but with, as I have already said, people in the Department of Justice. And we had considered the issues very carefully before the work of actually drafting the regulations was embarked upon. When Mr. Lowenfeld sat down to prepare a draft, I had given him instructions on the lines along which the draft should develop. So that it is not just that I sat and reviewed a draft that was brought to me and approved it or disapproved it. I conferred with Mr. Lowenfeld before the draft and gave him directions as to the form the draft should take. And then when the draft came back to me—I think it came back to me two or three times—I did myself work through it a couple of times, and suggested changes here and there, and so on.

Mr. SOURWINE. Mr. Chayes, Miss Knight has testified, and I quote from her testimony—

Any regulation which states that we cannot consider confidential information makes it virtually impossible to deny passport facilities to members of the Communist Party U.S.A.

Do you have any reason to doubt that statement?

Mr. CHAYES. I just would say I don't know about that statement, and I think we will have to wait and see what the experience is before we can say. Thus far, we have withdrawn a number of passports from members of the Communist Party. We are engaged, as you know, in a hearing process to substantiate that withdrawal.

Mr. SOURWINE. What passports have been withdrawn?

Mr. CHAYES. Well, I don't know the list of names, but at least five have so far been withdrawn.

Mr. SOURWINE. Without the hearing procedures required under the regulations?

Mr. CHAYES. No. Let me state this more accurately. We have notified five people that we are canceling or withdrawing their passports.

Mr. SOURWINE. That you intend to.

Mr. CHAYES. Intend to. And notified them that they were entitled to hearings.

Mr. SOURWINE. And Elizabeth Gurley Flynn was one of them?

Mr. CHAYES. Yes; Elizabeth Gurley Flynn was one of them.

Mr. SOURWINE. You have not actually taken away anybody's passport yet, a Communist passport.

Mr. CHAYES. No, we haven't; that is correct.

Mr. SOURWINE. Now, Miss Knight of course has been head of the Passport Division for some time.

Mr. CHAYES. Yes, she has.

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Mr. SOURWINE. Would you be willing to accept her statement about the effects of these new regulations on this matter which is her job?

Mr. CHAYES. I would certainly say that Miss Knight's opinion would be entitled to weight because of her experience and competence in this field; yes.

Mr. SOURWINE. You know, do you not, that the new passport regulations make it more difficult to deny a passport to a Communist applicant.

Mr. CHAYES. I would say that obviously any time that you have to act in accordance with procedures of this kind and on an open record, there will be occasions in which you can't prove the disability by such procedures. And then those passports won't be denied. Whereas with less stringent procedures, if you want to call them that, it might have been possible to act in such a way as to deny those passports.

Mr. SOURWINE. It would have been—as a matter of fact, under these new passport regulations certainly there is more procedural difficulty. And as to the practical difficulty, as you have said, wherever it is impossible to make out a case by a preparation of the evidence with the witness available to you, who are only witnesses who are willing to testify and witnesses whom the FBI is willing should testify—wherever it is impossible to make out a case by preparation of the evidence with such witness——

Mr. CHAYES. And, as you know, documentary evidence of various kinds can also be adduced. We are not dependent altogether on live witnesses.

Mr. SOURWINE. Oh, yes. But you are familiar with the Supreme Court decisions respecting what it takes to convict a man of being a member of the Communist Party.

Mr. CHAYES. Well, I don't think this is involved. What is involved here is conviction, as you know. I would say, Mr. Sourwine, that we don't know yet whether it will be, in the end, harder or easier under these procedures or some looser procedures, because it might turn out, it might have turned out, if we had adopted the procedures—at least I believe it would have turned out, if we had adopted other procedures, that the Court would have construed the statute, as we have here, as not permitting those other procedures, and that then our situation would have been that we had spent all of this time without being able to deny anybody a passport.

Mr. SOURWINE. Mr. Chayes, let's just look at that statement.

Assume that you had not issued any regulations, and that the policy was adopted of denying passports to any applicant whom the responsible official had reason to believe or knew he was a member of the Communist Party, U.S.A. They would all have been denied. Initially, no Communist would get one. Then isn't it true Communists or applicants, non-Communist applicants, if any, who felt they were aggrieved by this refusal, would have their recourse in court?

Mr. CHAYES. Surely.

Mr. SOURWINE. They could go to court, and there would be a trial in the district court. They could have an appeal, or the Department could have an appel. It could eventually go to the Supreme Court. It might take 2, 3, 4, 6 years, before your first test case was decided. In the meantime, not a Communist would have had a passport.

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Mr. CHAYES. Not necessarily.

Mr. SOURWINE. And, Mr. Chayes, when you finally came down to the end, if the Supreme Court decided, as you have decided you think the law is, we would be no worse off than we are now. And the Congress would then be in a position to reenact the statute.

Mr. CHAYES. Not necessarily, Mr. Sourwine, because, as you know, there is interim and preliminary relief in all of these cases. It is quite possible that a court, the lower court, could have given preliminary relief against this kind of activity.

Mr. SOURWINE. You mean an injunction to require the issuance of a passport?

Mr. CHAYES. To require—if the lower court thought that, as I do, that the statute required this kind of proceeding, prohibition against denial of a passport on the basis of anything less than a full hearing. It is quite possible.

Mr. SOURWINE. You don't think the granting of a passport is a discretionary act by the Secretary of State?

Mr. CHAYES. I think the granting of a passport is a discretionary act, but that the Secretary must exercise his discretion in accordance with the law and with the Constitution. And we know from the *Kent* and *Riedel* cases that he cannot deny a passport to Communists, except on the basis of statutory authority.

Senator HRUSKA. But can he be mandamused by a court to issue a passport?

Mr. CHAYES. He was in the *Kent* and *Riedel* cases.

Mr. SOURWINE. There is statutory authority now which there was not in the Kent and Riedel.

Mr. CHAYES. It is not altogether clear. If the statutory authority is as we believe it to be a statute which requires a full hearing, then he has not denied the passport in response to statutory authority, unless he grants it full hearing. So that it doesn't seem to me by any chance——

Mr. SOURWINE. Well, the worst that would happen in any individual case who took it to court and went through all the supreme procedure is that he would get the passport. Isn't that true?

Mr. CHAYES. Well, I don't think you can say that we would be justified if the lower court opinions were adverse—I am not sure that we would then be justified in continuing to act on the other view of the statute.

Mr. SOURWINE. You mean you wouldn't appeal—having taken a course of action you wouldn't appeal?

Mr. CHAYES. Sure we would appeal.

Mr. SOURWINE. And you would wait until you had a final determination, wouldn't you?

Mr. CHAYES. I am not altogether sure about that, either. The question what has happened in the interim would be a nice question—if we had preliminary—that is lower court decisions.

Mr. SOURWINE. If you didn't have regulations, no passport would go to a Communist unless it was ordered—no Communist would get a passport unless it was ordered by the Supreme Court that it be granted, isn't that true?

Mr. CHAYES. Not necessarily. That is, unless—the lower court—let's assume in the first place that the lower court made an order that

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said "State Department, give a passport." Now, even if we were going to appeal, the question whether that order would be stayed pending appeal is a separate question, and nobody knows whether that order would be stayed pending appeal. If it were not stayed pending appeal, then we would have a more general problem to see how we would act on cases that were not before the court.

Moreover, let me make one other point, which I think has not been fully developed here in the testimony.

You say the worst thing that could happen is that the particular applicant would get a passport. I don't believe that is so. That is, I don't think any of us know how the court decides or what matters effect the court's decision. One of the issues involved in this case is the power of Congress by statute to regulate passports, the issuance of passports, on these grounds. The worst thing that could happen in my judgment—and I speak now as a lawyer for the State Department, but more broadly I think as a fellow who has some interest in these matters—the worst thing that could happen is that the power of Congress to deny passports on these grounds, or to regulate the issuance of passports on these grounds should be denied, restricted, or cut back.

Mr. SOURWINE. Mr. Chayes, how can you say that when you have taken the position that no passport legislation was needed or desired.

Mr. CHAYES. I took the position that none was needed because I didn't think that it was wise for Congress to regulate passports at this time on those grounds, or at the time in 19—whenever it was—58, that I wrote the letter. I took it again last year. But that is quite a different thing from saying I don't think Congress ought to have the power to regulate if it should decide it was wise. And what I would like myself to do is to conduct—obviously, we are carrying out the law as we see it. But part of the motivation in our action is to conduct ourselves so as to sustain the power of Congress to act in this area.

Mr. SOURWINE. In an area that you don't want them to act in and don't think they should act in.

Mr. CHAYES. I don't think they should act now, nor did I think they should act 2 years ago. But that is a judgment that Congressmen are elected to make.

Mr. SOURWINE. You want them to have the power for the indefinite future.

Mr. CHAYES. I want them to have the power to make the judgment.

Mr. SOURWINE. Well, now, Mr. Chayes, suppose that the court ruled that Congress did not have this power. That would be the ultimate ruling, as you say.

Mr. CHAYES. That would be a very serious ruling I think.

Mr. SOURWINE. Now, back of that there could be many other court findings, such as a finding that Congress had to provide for certain procedure. But don't you see that by taking the position that the Department has taken, the chance of getting a court decision more favorable to the intent of the Congress that Communists be denied passports is foreclosed us?

Mr. CHAYES. Well, I see—I have no doubt at all that quite apart from the actual interpretation of the statute, as to which I understand

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that you disagree with us, and it seems to me that it is possible to disagree—although we believe that this is the interpretation. It is also possible to make a different judgment about the problem of litigating tactics.

I would only say again that this was part of the subject matter, discussions between us and the Department of Justice, and the people in the Department who will have control of the litigation. And this is the kind of judgment you have to make, and we made it.

Mr. SOURWINE. You think that the new regulations will reduce litigation.

Mr. CHAYES. No, I do not. I think we will very clearly get a court test probably of the *Elizabeth Gurley Flynn* case, but certainly at a very early stage—we will get a court test.

Senator HRUSKA. In that test, who will speak out for Congress?

Mr. CHAYES. I think the Department of Justice will speak out——

Senator HRUSKA. Not under the interpretation that you have been describing here, nor the motivation that you apparently have, which is that you don't think it wise to do it, and that you have very serious doubts as to the legality and constitutionality of Congress to assume and exercise that power. I still ask the question: Who under those circumstances will represent the Congress, and its view and its plain intent, and its very persevering goal, to try to get this job done?

Mr. CHAYES. Well, again, let me say, Senator Hruska, that we differ about what the intent of Congress was—at least insofar as it was embodied in the statute. I believe that the litigation which will emerge we will win, and I believe——

Senator HRUSKA. When you say "we," are you speaking of the Department of Justice now?

Mr. CHAYES. The Government will win.

Senator HRUSKA. The Department of Justice. Don't say Government, because you don't represent, in my judgment—I don't think you are doing a job of representing the viewpoint of the Congress. You can say the Department of Justice, if you want to, because you are part of that.

Mr. CHAYES. Let me put it a little differently, because also as a lawyer I should know enough not to predict the outcome of cases. But I believe that in the litigation that will emerge from this procedure, we will be in the best possible position to sustain a withdrawal of a passport, and in so doing, to sustain, as a constitutional matter, the power of the Congress to regulate the issuance of passports on the grounds established in the Subversive Activities Control Act.

Mr. SOURWINE. Can't you conceive, Mr. Chayes, that if you had not issued these new regulations, a court might not have required such procedure.

Mr. CHAYES. Oh yes, I think they might not. I think on the whole the act—and as we have testified before you in the past—I think that one of the differences between the situation I am now in and the situation that I was in 3 years ago, when I was a law school teacher, is that I could say on the one hand you can construe it this way, and on the other hand you can construe it this way. But in this situation you have to make up your mind. And my mind is made up this way. Now, I concede, as I have said before, that a reasonable interpretation of the act the other way might be made. It doesn't persuade me.

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Mr. SOURWINE. Mr. Chayes, can't you see that since these regulations have been issued and the Department is proceeding under them, there is no possibility of a court decision which requires any less than what the regulations provide for?

Mr. CHAYES. That is true. On the other hand, if the Congress itself believes generally, as Senator Hruska says, that we have not correctly interpreted its intent, Congress could, by statute, compel us——

Mr. SOURWINE. And that is the only recourse that Congress has. You have, by the administrative issuance of these regulations, foreclosed Congress from ever having a court decision more stringent toward the Communist applicants than your regulations are—unless the Congress itself, by its act, amends your regulations or by statute invalidates them. Isn't that true.

Mr. CHAYES. Well, I don't think that is foreclosed. I don't think that situation is one of foreclosure. That is the way Congress acts. If Congress directs us by statute to do that, of course we will do that.

Mr. SOURWINE. Now, could you suggest language which would be any stronger and more precise than the language that Congress used?

Mr. CHAYES. Yes. I think the language—if Congress wishes to accomplish that result, the language in the bill I think that Congressman Walters introduced in the House and perhaps Senator Eastland has introduced here—I don't know—would accomplish that result, that is, it addresses itself specifically to the question of the procedural steps and states that confidential information may be used.

Mr. SOURWINE. But can't you understand, Mr. Chayes, that the question of action prohibited on the basis of belief is new ground under the law. That there was a possibility that you might find court decisions would hold that this was a subjective matter, and that the testimony of the individual as to his belief if uncontroverted would have to stand? And that the courts might have held that this would be a justification? Can't you see that Congress attempted here to use a new device which might get at the Communist applicants more stringently, and that the new regulations have foreclosed all possibility of a court ruling on that point?

Mr. CHAYES. Well, you say don't I see that the court might have supported us if we had done something else. And the answer to that, which I have given, is that I can conceive a court taking a different view of the statute than I did. You gentlemen here do. Other people that I have talked to on the Hill have. So that obviously I cannot say it is an inconceivable result, or even a necessarily unreasonable result.

On the other hand, both in my own consideration of this, and the Department of Justice in their consideration of it, concluded the statute didn't mean that, that it meant something else. Now, you say we deny the plain meaning of the terms. I don't think they did. I think we had a situation in which a construction was required. And we had to make it. And in making it, we had to follow our best lights. I think we did. I think—if I had to judge how a court would come out, although I agree with you that a court might come out the other way—if I had to make a judgment as a lawyer, which is part of what we had to do, I judge that they would come out to require it, as we did.

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Mr. SOURWINE. All right, sir.

Mr. Chayes, who have been the persons most actively concerned with State Department rulings regarding the issuance of passports to members of the Communist Party?

Mr. CHAYES. Well, in the past I don't know. From the period that I have been here, I have been concerned in a variety of ways. But more in terms of the establishment of this general policy which expressed itself in the regulations. That is, I had more concern with development of the regulations. On the other hand, obviously Miss Knight and her people had significant responsibility and concern. And as you have already indicated, some differences of view.

Within my office, there were a number of people. Mr. Lowenfeld was one. Some others. But all of them worked very closely under my direction. It wasn't——

Mr. SOURWINE. Well, Mr. Katzenbach has been concerned with it, hasn't he?

Mr. CHAYES. He is not in the State Department.

Mr. SOURWINE. I said persons most actively concerned with the State Department program.

Mr. CHAYES. I am sorry. Well, let me continue. In the Department itself, Mr. Jones was obviously closely concerned and was kept informed at all times. And the Secretary himself, at critical stages in the development of our policy, considered these matters.

Now, in the Department of Justice, I dealt with Mr. Katzenbach and members of his staff. I think, although I cannot recall all the meetings—it has been some time ago, and I don't keep a diary which states the attendance at meetings—I think at least at one of the meetings with us, and probably more, Mr. Yeagley was there. I have heard Mr. Katzenbach say, and in fact I may have been at a meeting at which the Solicitor General also—I think I was at a meeting at which the Solicitor General participated. And I know that he was consulted.

Mr. SOURWINE. You mean the present Solicitor General.

Mr. CHAYES. Present Solicitor General; yes sir.

Mr. SOURWINE. Of course, Mr. Dutton was concerned?

Mr. CHAYES. Well, Mr. Dutton was concerned only at the very end when the question came of our informing the committees, and he did not really have an important role in the development of the policy.

Mr. SOURWINE. Was Mr. Tubby concerned with this?

Mr. CHAYES. Again, in the same way. He was brought in at the very end, because there became—I think in fact they both came to the same meeting at the same time.

Mr. SOURWINE. How about Malcolm Kilduff.

Mr. CHAYES. I don't know that he was concerned in any way other than as a special assistant to Mr. Tubby. The question was what kind of press information should be given to this thing, and we consulted Mr. Tubby on that.

Mr. SOURWINE. Well, when was this meeting you are talking about that Mr. Tubby and Mr. Kilduff and Mr. Dutton attended?

Mr. CHAYES. I can't date it exactly, but it was after the first of the year I would think. It was within a week or 10 days, something like that, before the regulations were issued.

Mr. SOURWINE. Right after the first of the year.

Mr. CHAYES. I think so.

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Mr. SOURWINE. And the purpose of the meeting was to consider the release or public announcement of the new passport regulations?

Mr. CHAYES. Yes, it was to consider, A, what should be done by way of informing Congress, and, B, what should be done by way of informing the public.

Mr. SOURWINE. Originally it was planned to hold a press conference to announce the new regulations.

Mr. CHAYES. We did hold a press conference.

Mr. SOURWINE. You did hold a press conference.

Mr. CHAYES. Yes sir; on the record.

Mr. SOURWINE. The original plan was that you and Walter Yeagley would carry the ball at this press conference. Was he present?

Mr. CHAYES. I don't know that that was the original plan. I think we may have considered it. The fact is that Mr. Jones and I were the two officers at the press conference, and there was no one from the Justice Department.

Mr. SOURWINE. Mr. Lowenfeld was there, wasn't he?

Mr. CHAYES. I guess he was there. But—he was there as an observer. He did not participate in the conference. Mr. Jones and I answered the questions.

Mr. SOURWINE. We have the transcript of that conference in our records I think.

Mr. CHAYES. If not, you can get it very easily. It is a public document. In fact, Mr. Jones said he wanted to be on the record.

Mr. SOURWINE. Is it true there has been an agreement among those concerned at this meeting, and I include yourself and Mr. Katzenbach, Mr. Tubby, Mr. Dutton, Mr. Lowenfeld——

Mr. CHAYES. I am not sure Mr. Katzenbach was at that meeting with Mr. Tubby and Mr. Dutton. I just am not sure. I just am not sure. I just don't know. I think it may have been entirely an internal State Department meeting. I am sure he was informed of the results. I mean I just—well, go ahead.

Mr. SOURWINE. Is it true that there had been an agreement among those concerned at that meeting that Mr. Dutton would take care of Congressman Walter on the matter of these new regulations?

Mr. CHAYES. Well, I don't know what you mean by take care of. I think somebody may have used that language. All that was meant—we tried to see what the procedure ought to be for informing the interested committees of Congress. And if that language was used, which I don't know, I don't have a transcript of that meeting, it was used in that sense, and not in any other sense. I think as a matter of fact what happened was that Mr. Leahy took care of that assignment—that is, handled the problem—handled the mechanics of notifying the appropriate congressional committees.

Mr. SOURWINE. What did this meeting some 10 days before the issuance of the regulations decide with respect to informing the committees of the Congress?

Mr. CHAYES. I think we decided that as soon as the Secretary had seen and approved the regulations, that the committee should be informed and that thereafter—I guess that is all. We decided as to informing the committees of Congress. I think that happened.

Mr. SOURWINE. The fact is that the Secretary saw and approved the regulations on the 9th, and the committees of the Congress were

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informed on the 11th, and the thing was published in the Federal Register on the date of the 12th which was on the press at the time the committees of Congress were informed.

Mr. CHAYES. I think that is not right. I think Congressman Walter's committee was informed on the 10th. I think as I recall Mr. Leahy's account, he came and tried to inform you here on the 10th also, but couldn't make contact. And so you were not informed until the 11th. As to the stuff being on the press, it was then set in type for the earliest possible publication, yes. But—there was no intention to publish before we had informed Congress, and before we had informed the public.

Mr. SOURWINE. Mr. Chayes, did you personally give information respecting the new passport regulations to any newspaperman other than at the public press conference you talked about?

Mr. CHAYES. No. I was called by a newspaperman who read me an account of the regulations that had come over the UPI ticker. I don't know how it got to the UPI ticker. The amount was erroneous in some respects. I told him to get in touch with Mr. Lowenfeld and Mr. Lowenfeld would correct these errors.

Mr. SOURWINE. Who was that newspaperman?

Mr. CHAYES. Let me go further. I then did call Mr. Lowenfeld and authorized him to correct these errors. Well, I don't know that there is any question about who it was. I think it was Tony Lewis of the New York Times.

Mr. SOURWINE. He called you from New York?

Mr. CHAYES. No; he is here in Washington.

Mr. SOURWINE. He didn't visit you in person?

Mr. CHAYES. No.

Mr. SOURWINE. And you did not yourself privately give any information to him respecting the new passport regulations?

Mr. CHAYES. No. This was, let me say, the night of the press conference.

Mr. SOURWINE. Did you give Mr. Lewis a copy of Mr. Yeagley's letter?

Mr. CHAYES. No.

Mr. SOURWINE. Did you give him access to a copy of that letter?

Mr. CHAYES. No.

Mr. SOURWINE. Do you have any idea how he got a copy of that letter?

Mr. CHAYES. No. He covers the Justice Department.

Mr. SOURWINE. Anyway, the Times had a very thorough scoop on the new regulations.

Mr. CHAYES. They didn't have a scoop, because the UPI story had come out on Thursday. From what source, I don't know. But I have satisfied myself that it was no source in my office. And I think if you once look at the first story on it, it was in the Star of Thursday night—the UPI story, as I recall, was the first story on that. The Times came out the morning—Friday morning—that is the morning that the regulations were issued.*

Mr. SOURWINE. When did the State Department adopt the position that there was no need for any passport legislation.

*See news stories on pp. 260–262.

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Mr. CHAYES. I don't think the State Department has formally adopted that position at any time. We did consider, partly because when my own confirmation hearing was—when I was appearing in my own confirmation hearing, the committee, Foreign Relations Committee, raised the question of a review of the need for passport legislation, and partly because of other factors, we did consider with the Department of Justice whether the administration should develop or support a passport bill, or take steps to secure the enactement of a passport bill.

After some general consideration we—again I think it is fair to say Mr. Katzenbach was the man with whom I talked most frequently at Justice—we simply came to the conclusion that the administration, so far as we were concerned, should not. I think we all informed our superiors informally of that—that this is the place we got to, and other interested people—getting no contrary reaction, it simply remains in that state.

Mr. SOURWINE. When was this decision taken?

Mr. CHAYES. Oh, again, it is very hard for me to give you accurate dates. These discussions continued from the beginning of the new administration, I would say, until some time in the summer, maybe early fall.

Mr. SOURWINE. Of 1961?

Mr. CHAYES. Of 1961; yes, sir.

Mr. SOURWINE. Now, are you familiar with the testimony given up here by John Hanes, then Deputy Under Secretary of State?

Mr. CHAYES. I think I have read a part of the testimony; yes.

Mr. SOURWINE. You are aware that he testified——

Mr. CHAYES. He is not Deputy Under Secretary of State. He was—was John Hanes Deputy Under Secretary of State?

Mr. SOURWINE. I though you said—what was his correct title?

Mr. CHAYES. I think he was Administrator of the Bureau of Security and Consular Affairs.

Mr. SOURWINE. He did not rank as an Assistant Secretary?

Mr. CHAYES. I am not sure whether he does or not. I think he does rank as an Assistant Secretary, but a Deputy Under Secretary is higher than that.

Mr. SOURWINE. I am sorry.

You are aware, are you, that Mr. Hanes testified not only that passport legislation was urgently needed, but that any passport legislation which did not give the Secretary of State the right to deny passports to Communists on the basis of confidential information would be worse than useless?

Mr. CHAYES. I am not sure that I know that he did, but I assume that he did if you say so.

Mr. SOURWINE. Well——

Mr. CHAYES. I know that he supported the legislation to that effect.

Mr. SOURWINE. He did say this, and it is in the record.

Mr. CHAYES. Yes.

Mr. SOURWINE. And I am wondering how you would square that up with the action of the State Department in issuing regulations—in other words, in doing itself what Mr. Hanes said if done by Congress would be worse than useless.

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Mr. CHAYES. Well, Mr. Hanes was testifying in support of legislation. If Congress had legislatively told us to do that, we would have done it. I don't think Congress did tell us to do it, and I think we had to obey the statute.

Mr. SOURWINE. You don't agree with Mr. Hanes' testimony as to the uselessness of such legislation.

Mr. CHAYES. I don't think that our present procedures are useless; no.

Mr. SOURWINE. Do you remember a meeting held in your office November 7, 1961, to discuss the subject of passport regulations?

Mr. CHAYES. I don't remember it in the sense that I could date it, but we were concerned—actually we were concerned in June when the Court first upheld the Subversive Activities Control Act, thus bringing into play the provisions of section 6 for the first time. We were concerned to develop a way of administering that section. And I think our first activity began in June. Then, as you recall, Justice Frankfurter stayed the order until the fall, pending a motion—consideration of a motion for rehearing. At that point, the Berlin crisis came along. I spent some time abroad. Since I was personally involved in this thing, and wanted to be personally involved, the further activity was deferred.

Again, in the fall, I had to go abroad on another matter. I had asked that some work be started before I left. And as soon as I returned, which was about the first part of November, we did begin actively to work on developing these regulations. And I would suppose there was a meeting around then in my office. There were several meetings in my office.

Mr. SOURWINE. Would you be willing to give the committee the minutes of these various meetings?

Mr. CHAYES. I don't think there are any minutes. I would search for whatever records there are of those meetings.

Mr. SOURWINE. Well, it is the practice of your office to keep a record of such meetings—who was present, and the substance of what happened, is it not?

Mr. CHAYES. No, it is not my practice at all to do that.

Mr. SOURWINE. It is not?

Mr. CHAYES. I make a diary entry that says what I did. Sometimes I add who was there. And maybe just the subject matter of the meeting.

Mr. SOURWINE. I see.

Mr. CHAYES. Let me say there are some meetings obviously that we record. That is, if we are talking to a representative of a foreign government, we make a record of that. Also rather formal interdepartmental meetings of one kind or another, we may also record. This was an informal working meeting designed to get us ahead. And I don't think there is any record.

Mr. SOURWINE. All right. Now——

Mr. CHAYES. I would have no objection to the committee's having whatever records there are.

Mr. SOURWINE. Would you look, and if there are any, let us have them?

Mr. CHAYES. I certainly will.*

* No records were produced responsive to this request.

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Mr. SOURWINE. Thank you.

I want to make it clear, this question is not asked primarily for the purpose of probing into the inner activities of the Department, but as a means of determining the persons who participated and who might be possible witnesses on the subject.

Referring to this meeting of November 7, 1961, in your office, do you recall such a meeting, among those present being George Denney of the staff of the Senate Foreign Relations Committee, Nicholas Katzenbach of the Justice Department, Nathan Siegel of the Justice Department, Raymond T. Yingling, Hugh Appling, Mitchell Suplinsky, Ed J. Hickey, Robert Johnson, and yourself, all from State?

Mr. CHAYES. First of all, let me say that I can't identify the meeting by date. I don't know. Nor can I identify a particular meeting at which all those—can say for sure all those people were present. I recall a meeting at which Denney and Katzenbach and some others from his office, Yingling and I, and some others from State, were there.

Mr. SOURWINE. The purpose of this meeting was to discuss passport regulations and/or legislation and the need for changes therein?

Mr. CHAYES. Well, since Denney was there, it probably was primarily for the purpose of talking about legislation. I don't think—I don't know whether we discussed regulations then at all.

Mr. SOURWINE. Didn't Mr. Denney at that meeting ask what should be done about passport legislation and didn't you reply that there was no need for any?

Mr. CHAYES. I think what I did reply to him was exactly what I said—I mean maybe not word for word—but I conveyed to him exactly the same idea that I conveyed to you just a few minutes ago—namely, that we had been engaged in a study to see whether the administration should press for passport legislation of one kind or another, that we had come to the conclusion for ourselves that there was no need to, and that we thought it was best to let things remain the way they were, from the administration's point of view.

Mr. SOURWINE. And didn't Mr. Denney then point out that there had been no answer from the State Department to Senator Fulbright's letter to this subcommittee, but in view of the Department's attitude as you had outlined it, the Foreign Relations Committee would not press for a reply to that letter.

Mr. CHAYES. I think perhaps—there was some talk about the letter from Senator Fulbright. I am not sure that we didn't make some sort of a formal reply to that letter.

Mr. SOURWINE. But at least on the occasion of this meeting, you did give what amounted to an oral reply.

Mr. CHAYES. That is right. An oral disposition of the request.

Mr. SOURWINE. I had understood you to say earlier here that you did not think that the administration's decision with regard to the undesirability of passport legislation had been communicated to the legislative branch.

Mr. CHAYES. If I said that, I did not mean to say it. What I meant to say was that there was not a formal kind of decision in which the highest authorities in the administration acted. What happened was that we undertook a study of this kind; we reached more or less general conclusions that the administration should not seek legislation;

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we informed the people who were interested in the problem. And I did not mean to exclude——

Mr. SOURWINE. You implemented the decision very quietly.

Mr. CHAYES. Well, we simply informed people of our, sort of, conclusion, and did not get any negative——

Mr. SOURWINE. You made no public announcement. If you had, it might have caused quite a furor, because it would have been a sharp break with the position taken by the previous administration.

Mr. CHAYES. We made no public announcement because we did not think there was a public issue.

Senator HRUSKA. Did you think there was any interest in the problem publicly?

Mr. CHAYES. Well, I do not think it was a—you know— an issue of great concern at the moment. If anybody had asked us what the situation was, we would have been perfectly prepared to say exactly what we said here.

Mr. SOURWINE. Mr. Chayes, from the chronology furnished by Miss Knight, and now in our record, it appears that on November 1 of last year the Passport Division requested the Immigration and Naturalization Service to withdraw the passport of Elizabeth Gurley Flynn, and that on November 3, 1961, you and Mr. Yingling advised the Passport Division that it had no authority to withdraw the Flynn passport, the matter being one solely for the Department of Justice.

Would you explain that?

Mr. CHAYES. No, I do not quite think that was the basis of my advice. My advice was based on the fact that the legislative authority did not come into effect until there was a final order, and that was not until the 20th. And I did not think that we ought to instruct on withdrawal of passports until the legislation was in fact effective, because again I though that would put the Department and the legislation itself into a seriously bad position.

Now, I may have said if the Department of Justice wants—after all, if there is an Immigration and Naturalization Service person who examines the passports—the Department of Justice has an enforcement responsibility. And the use of a passport, as you know, by a member of the party was also proscribed by the legislation. If the Justice Department had a different view, and felt in enforcing the statute—Miss Flynn, if you recall, was at that time abroad, and the question was, Would the passport be withdrawn as she reentered the United States? If the Justice Department thought it had an enforcement responsibility—that this was a prohibited use—I said I was not going to prevent them from enforcing the statute as they saw it. But I would not, on behalf of the State Department, issue instructions for the withdrawal of the passport before the act—before the order—had gone into effect.

Mr. SOURWINE. Was this opinion or instruction given orally or in writing?

Mr. CHAYES. I think it was.

Mr. SOURWINE. Orally?

Mr. CHAYES. I do not believe we had any paper on it.

Mr. SOURWINE. Mr. Chayes are you satisfied with the record in the *Elizabeth Gurley Flynn Passport* case?

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Mr. CHAYES. I have not examined the record.

Mr. SOURWINE. Are you aware that this record shows the futility of the present regulations?

Mr. CHAYES. I am not sure it does. I have not seen the record. I mean I do not—as I say, I have not examined the record. We have not gotten a decision yet. But I am sure we will have a decision soon. I hope the decision will be that Miss Flynn's passport is to be withdrawn. And then we will have further court proceedings.

Mr. SOURWINE. I recommend that you read it. I think you will find it a wonderful example of how attorneys for Communist passport applicants, or passport holders, will use the new regulation to stultify the Department of State.

What I meant to reach by my earlier question, speaking of futility, was the matter of the production of witnesses.

Your regulations have put the State Department in an impossible position, because they call for the confrontation. And the State Department has no authority to subpena a witness or otherwise force the attendance of a witness. You ran into this in the *Elizabeth Gurley Flynn* case, did you not?

Mr. CHAYES. Well, let me start by saying I do not regard the position as impossible, because I think we have—we have proceeded in the *Flynn* case itself, producing a live witness without subpena.

Mr. SOURWINE. I will tell you why it is impossible.

Mr. CHAYES. But——

Mr. SOURWINE. Mr. Chayes, please, you wanted to take just one point at a time. The fact that you have been able to do something in one case does not go to the question of whether the procedure is impossible. It is the other way around. If you can show one case in which he cannot do it, then it is an impossible procedure. And you will agree, I think, that if there is testimony from an FBI informant against a certain applicant, and the FBI says, "All right, this informant may come in," then you are in the point where you are obligated to produce that informant or else you have to grant the passport.

Mr. CHAYES. No, I do not think that is so at all, sir.

Mr. SOURWINE. This is not so?

Mr. CHAYES. No, sir.

Mr. SOURWINE. All right.

Mr. CHAYES. We are obligated to produce evidence on the record which will induce the hearing officer, the reason to believe, knowledge or reason to believe, that the applicant is a Communist.

Mr. SOURWINE. Isn't it more than that? I just want to check, because we have talked to Mr. Lowenfeld about this. Isn't your criterion that you must show by a preponderance of the evidence sufficient to convince a reasonable man that the applicant is a Communist?

Mr. CHAYES. The regulations do talk about preponderance of the evidence. But the question is what preponderance of the evidence, showing what? And it does not say that the tribunal must be convinced by a preponderance of the evidence that the man is a Communist. What it says is it must be convinced by a preponderance of the evidence of the relevant facts—what are the relevant facts?—knowledge or reason to believe. Now, therefore, I do not think that the regulations prescribe that the hearing officer must be convinced by a preponderance of the evidence.

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Mr. SOURWINE. You mean the issue at this hearing is whether the issuing officer had knowledge or reason to believe that the man was a member of the Communist Party?

Mr. CHAYES. The issue is whether the evidence adduced at the hearing, by a preponderance of the evidence, is enough to induce a reason to believe—yes, reason to believe.

Mr. SOURWINE. That is what I said a minute ago.

Mr. CHAYES. It is not——

Mr. SOURWINE. You are not being subjective about it. That is, you say the question is not whether the issuing officer had reason to believe.

Mr. CHAYES. That is right. It is a question whether the record produces reason to believe; yes.

Mr. SOURWINE. Then I stated it accurately. You say it is not a question of whether the hearing officer himself comes to believe.

Mr. CHAYES. That is right.

Mr. SOURWINE. Then I stated it accurately, did I not?

Mr. CHAYES. Well, if that was your former statement, I think we are in agreement, then. I do not want to argue with you.

Mr. SOURWINE. All right, Mr. Chayes.

Now, what efforts were made to get the New York Times and Associated Press reporters to testify as witnesses in the *Elizabeth Gurley Flynn Passport* case?

Mr. CHAYES. Let me say that I do not know exactly what efforts were made, because I have dissociated myself as a matter of policy. I know that some efforts were made, and some difficulties were had—that in the end one live witness appeared.

I would like to finish this up, because I want to finish it up with a request.

Let me say also that I think, or at least people told me who had examined the available evidence, that the record would have permitted a finding even without a live witness—that is, the documentary record would have been adequate.

Finally, it is true that the absence of the subpena power raises difficulties in this matter. We have already considered, I think—I am not sure we have made a formal request, but I know Mr. Lowenfeld requested or stated when he was here the other day, and we are prepared to make a request—really we thought of doing it in connection with this reorganization of the bill reorganizing SCA—for subpena power in connection with the passport hearings.

Mr. SOURWINE. Why do you think the State Department should have subpena power?

Mr. CHAYES. I do not think it should have general subpena power. But I think where it is required, as it is under the law, to act in a quasi-judicial capacity, on a matter which affects the rights or asserted rights of U.S. citizens, then it should have the power to——

Mr. SOURWINE. What law requires the State Department to act in a quasi-judicial capacity in this connection?

Mr. CHAYES. I believe that the Control Act does.

Mr. SOURWINE. Without your passport regulations, there is not a line in that act that gives you quasi-judicial authority or responsibility.

Mr. CHAYES. I do not think——

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Mr. SOURWINE. You have given it to yourself under your regulations. Isn't that true?

Mr. CHAYES. I would suppose, Mr. Sourwine, that no matter what the regulations provide, even if you had gone back to the old regulations, which had a hearing procedure, as you know, that the Department would be acting in a quasi-judicial capacity, in the sense that it is deciding on a citizen's right to have a passport or his application for a passport, within a legal framework. So regardless of what the procedures are, it seems to me it is acting in a quasi-judicial capacity.

Mr. SOURWINE. Well, a quasi-judicial capacity involves an adjudication.

Mr. CHAYES. I think so.

Mr. SOURWINE. Can't you distinguish between adjudication and administrative decision?

Mr. CHAYES. Well, there are kinds of administration decision which require more or less adjudication. I think this kind of decision, under these regulations—or if we had just taken over the old regulations in toto—would involve a very large element of adjudication.

Mr. SOURWINE. Do you think the State Department necessarily has an adjudicatory function here, and therefore it should have the subpena power?

Mr. CHAYES. That is right, I do. In connection with this function, I do not want a broad subpena power, but in connection with this function.

Mr. SOURWINE. Isn't it a fact that nobody recognized this problem until after your regulations had been issued, and after they had been issued and you found out you could not even get a New York Times reporter to come down and testify what he saw at a public meeting, because his paper would not let him, then you decided you needed the subpena power?

Mr. CHAYES. I do not know whether his paper would let him or not. It is true the problem did not arise or occur to us until after we had experience with it.

Mr. SOURWINE. If you considered it before you wrote the regulation, the proper procedure would have been to come up to Congress and ask for the subpena power.

Mr. CHAYES. I am not at all sure.

Mr. SOURWINE. And then you try to put Congress in a box where they have to grant it.

Mr. CHAYES. We give them a choice of granting it. They can act or not act as they choose. They are not in a box.

Mr. SOURWINE. All right, sir.

Mr. Chayes, we had a chronology furnished us by Miss Knight.

Mr. CHAYES. May I let it appear of record, for whatever relevance it has, that I did not have a chance to examine that chronology. I have not had at any time, and certainly not before it was presented.

Mr. SOURWINE. I will read it to you, sir, and I will see that you get a copy before you leave here today. I now have one that I can give you.

Mr. CHAYES. Very good, thank you.

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Mr. SOURWINE (reading):

November 16, 1961: Passport drafted for SCA on Temple signature, reply to letter dated November 9, 1961, from Congressman Walter to Secretary regarding HCUA interest in section 6 Internal Security Act. Reply stated internal procedures in close liaison being maintained with the Department of Justice.

How would we go about getting the reply that is mentioned there?

Mr. CHAYES. I think you might ask Congressman Walter for it.

Mr. SOURWINE. No!

Mr. CHAYES. I thought it said reply to Congressman Walter's letter.

Mr. SOURWINE. You think this refers to the reply that was given to Congressman Walter?

Mr. CHAYES. I think that is right, yes. I am not sure. I do not even recall having seen the letter.

Mr. SOURWINE. You did not have anything to do with it?

Mr. CHAYES. Not to my recollection.

Mr. SOURWINE. All right.

On November 3:

Passport Office sent memorandum to Mr. Abram Chayes, transmitting two lists of persons who appeared to be within the purview of 50 U.S.C. 785. The lists were compiled from the records of the Passport Office.

Can we get that memorandum?

Mr. CHAYES. I would—I do not have the authority to give it to you. I can request it.

Mr. SOURWINE. Will you do so?

Mr. CHAYES. Yes.*

Mr. SOURWINE. Thank you.

Mr. CHAYES. The date of it, please?

Mr. SOURWINE. November 30, 1961.

December 1: Passport Office sent a memorandum to Mr. Abram Chayes recommending the withdrawal of passports issued to individuals on the national levels of the Communist Party leadership—recommending the issuing of appropriate letters to such individuals concerned, notifying them of the tentative withdrawal of their passports, and affording them a hearing and right to appeal.

Can we get that memorandum?*

Mr. CHAYES. Again, let me request authority to give it. Let me say that in effect was the process finally decided upon, although we did not think it was appropriate to withdraw them before the regulations were out.

Mr. SOURWINE (reading):

December 7: Passport Office sent a memorandum to Mr. Abram Chayes recommending that the following statement be placed in all passport application forms, registration forms, agency notices, and so forth: "Section 6 of the Internal Security Act of 1950, 50 U.S.C. 785, provides a severe penalty, fine, and/or imprisonment for a member of a Communist Party of the United States who applies for a passport or the renewal of a passport, or who uses or abuses or attempts to use a passport."

The same date——

Mr. CHAYES. You want me to respond to that?

Mr. SOURWINE. No, not yet. The same date there was a meeting in the legal adviser's office.

* No further communication was received from State re these requests.

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Mr. Abram Chayes reviewed his conversations with the Department of Justice attorneys. Mr. Chayes advised Miss Knight of the Secretary's interest in not withdrawing passports, but in having the statute enforced by means of criminal prosecutions in due course.

What do you mean by the Secretary's interest in not withdrawing passports?

Mr. CHAYES. Well, let me start with the notification, the card, and the notification business—although it may appear there may be a recommendation from Passport to us, the fact is that Miss Knight and I talked about various steps to be taken once the regulations went into effect. And one of the important things, and one that could be done very quickly, we decided at an early stage was to notify applicants of the fact that the law was in effect so that, again, in prosecutions there would be no claim of unintentional violation or something like that.

Now whether the initiation of that came from Passport or not, I do not know. But the memorandum was long after the thing was initiated.

As to the other, the withdrawal problem, the Secretary—I raised the question briefly with the Secretary, and the Secretary was concerned that there not be a wholesale cancellation of passports which would lead to a lot of litigation and a lot of activity in the Department of this kind. At first his view was that we should simply wait and let criminal penalties apply, once a person had applied for a passport, let him be prosecuted, rather than the other way around. Later, after further consideration of the matter and after talking with the Department of Justice, we jointly decided to recommend that certain passports be picked up—again, the high ranking ones be picked up. And we made that recommendation to the Secretary and he accepted it.

Mr. SOURWINE. Mr. Chayes, are you familiar with the passport case of the so-called Berlin Mata Hari, Hammerstein?

Mr. CHAYES. I'm afraid not. If you gave me some more information, I might know. But I do not.

Mr. SOURWINE. Are you familiar with the passport case of Julian, the so-called Black Eagle of Katanga?

Mr. CHAYES. I know something of that case, yes.

Mr. SOURWINE. Are these cases of individuals who should not hold passports, but with respect to whom it has been ruled the passport cannot be picked up? Isn't that correct?

Mr. CHAYES. No, that is not correct, at least not in the case of the Julian situation, which I do know.

Mr. SOURWINE. You think his passport is proper?

Mr. CHAYES. No, I think it could be and can be picked up.

Mr. SOURWINE. Oh, I am glad to hear this. This decision has just been made?

Mr. CHAYES. No. Again, because of the circumstances of the situation, I do not think any formal instruction has gone out. But in all of my consideration of this case, we have assumed that the passport can be marked valid for return to the United States.

Mr. SOURWINE. It has not been picked up yet.

Mr. CHAYES. It has not been picked up because of the circumstances there.

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Mr. SOURWINE. Can the Secretary of State waive a statutory requirement?

Mr. CHAYES. No; the Secretary of State cannot waive a statutory requirement.

Mr. SOURWINE. Mr. Chayes——

Mr. CHAYES. Unless there is authority. He cannot waive unless he is authorized to waive it.

Mr. SOURWINE. Mr. Lowenfeld gave us considerable testimony which boiled down to this—that the State Department had serious doubts about the constitutionality of at least section 6 of the Internal Security Act and felt that this should be corrected by regulations. Do you agree with this position?

Mr. CHAYES. Well, I read Mr. Lowenfeld's testimony. I would not myself interpret his testimony that way.

Mr. SOURWINE. Well, I do not mean to misinterpret it. How do you interpret it?

Mr. CHAYES. If you ask me do I agree with that position as a position, the answer is I do not think that describes our activity here. We sought to construe the statute in the way lawyers do when they are asked to give legal advice. We considered the internal provisions of the statute, the scheme of the statute, and of course we considered intervening cases in the Supreme Court—mainly in the Supreme Court—which have a bearing on construction of the statute. Having considered all this in the way, as I say, that lawyers do when they are asked to give opinions, we came to the conclusion that the statute as written requires a hearing of the kind that is prescribed by the regulations.

Mr. SOURWINE. You do not think that any unconstitutionality in the statute can be cured or helped by any regulation, do you?

Mr. CHAYES. Again, if the statute is unconstitutional in the sense that the court believes that Congress does not have the power to regulate the issuance of passports on this ground, obviously that cannot be cured by regulation. On the other hand, I would say, and I think there is an element of this in this—that is, we are anticipating litigation—the atmosphere in which the case comes to the court can affect the views of particular justices on that question.

Mr. SOURWINE. I see.

Mr. CHAYES. And the regulations can affect the atmosphere, yes.

Mr. SOURWINE. Mr. Chayes, in addition to Executive Order 10450 with regard to the investigation of appointees to positions in the Department of State, are there any statutory requirements respecting investigation for loyalty and suitability?

Mr. CHAYES. I assume there are, but I have not myself examined any. I saw the reference to a particular one in Mr. Lowenfeld's testimony.

Mr. SOURWINE. Were you familiar with that particular one?

Mr. CHAYES. I had not myself considered the language of it. In the one case in which we were consulted, the consultation—the contact was made with me directly. I referred the question to Mr. Lowen-

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feld. When he came back to me with the conclusion that a full field investigation was required, I simply approved that without further consideration, since it did not seem to me we would be doing anything that was likely to lead to trouble or criticism if we followed that path.

Mr. SOURWINE. So it has been and is the ruling of your office that it is a requirement that all persons named to the U.S. Advisory Commission on the Arts shall be investigated for loyalty and suitability in accordance with standards approved by the President, and that that means a full field under Executive Order 10450?

Mr. CHAYES. No, I do not think we ever came to that issue. The question in the particular case was that there was some material—I do not know what it was, because I did not examine it—but there was some material in the file which indicated the necessity of a full field investigation. And all we decided was that in that case the material in the file was enough to warrant a full field investigation.

Mr. SOURWINE. Mr. Chayes, isn't it true that efforts are being made right now to circumvent the provisious of the law I cited to you, and to secure without preinvestigation for security, appointment to the U.S. Advisory Commission on the Arts of, among others, Archibald McLeish, Melvyn Douglas, Agnes DeMille, and George Seaton?

Mr. CHAYES. I do not know, except I think one of those names was the one on which we were consulted, and which we said that a full field would be required.

Mr. SOURWINE. Do you know if it is true that Mr. McLeish has been definitely promised one of these appointments by Mr. McGeorge Bundy?

Mr. CHAYES. I do not.

Mr. SOURWINE. Would you agree that the legislative history of that cultural affairs law indicates that the jobs on the U.S. Commission on the Arts are sensitive from a security standpoint?

Mr. CHAYES. I have not examined the legislative history. As I explained, in the one situation in which I was called upon to advise, since we decided upon a full field investigation, there was no occasion to examine the question whether anything less would be legal.

Mr. SOURWINE Mr. Chayes, have you reported that this committee is not really seriously interested in this matter of regulations and that this is evidenced by the fact that only one Senator has been sitting at the hearings?

Mr. CHAYES. No, I have not reported that.

Mr. SOURWINE. Have you heard the report?

Mr. CHAYES. I have said that it did not seem to me, on the basis of the testimony that we have had here, that the committee was likely to take any action. That was simply a factual judgment about the likelihood of legislative action.

Mr. SOURWINE. You have said, have you not, that the regulations are in force now, that they are safe from any congressional attack?

Mr. CHAYES. I said that I doubted there would be any legislative action, yes.

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Mr. SOURWINE. Did you in this connecton call these committee hearings just an exercise?

Mr. CHAYES. No, I do not think I did. I do not believe they are just an exercise.

Mr. SOURWINE. Finally, Mr. Chayes, do cases involving passport applications by members of the Communist Party and cases involving proposed revocations of passports held by members of the Communist Party stand on the same footing procedurally?

Mr. CHAYES. We have had some thought about that, but we have treated them the same, and I think the regulations apply, in terms, say they apply both to withdrawals and applications.

Mr. SOURWINE. Do you think these two types of cases stand on the same footing so far as the law is concerned?

Mr. CHAYES. Yes, I do not believe that the Secretary—I believe that the Secretary may withdraw passports which he could not lawfully issue, but he cannot withdraw passports; that is, in this area. I take it—well, I think that is right. I do think they stand on the same footing.

Mr. SOURWINE. Do you think that any passport that the Secretary issued lawfully he may not withdraw?

Mr. CHAYES. No, that is not exactly what I said, because he may——

Mr. SOURWINE. I thought it was.

Mr. CHAYES. He may have issued a passport lawfully, which was lawful at the time issued, as, for example, these passports to Miss Flynn. It was lawful to issue it at the time. Indeed, he could not have withheld it at the time.

Mr. SOURWINE. Isn't it true, Mr. Chayes, in the case of granting a passport, there is a statutory prohibition, whereas there is no such prohibition or mandate with respect to the revocation of passports?

Mr. CHAYES. That is true. In other words, I do not believe the Secretary is compelled to withdraw these passports. I thought you meant the legal grounds on which he could withdraw them. And I think the legal grounds are the same. But we thought first of all that we would be derelict if we did not make some effort to act in the field of withdrawal. And secondly——

Mr. SOURWINE. You think the legal grounds are the same?

Mr. CHAYES. I think that the Secretary may withdraw a passport in any situation where to issue it today would be illegal. That is all I am saying. But withdrawal, as I say, is discretionary. Whether the Secretary chooses to withdraw it or not is another issue. As you say, he is prohibited by law from issuing the passport in those circumstances.

Mr. SOURWINE. I think our time has run out, Mr. Chairman. I would like to ask one more question.

Mr. Chayes, did you have anything to do with the conception and execution of the plan to get Mr. Struelens out of the country by lifting his visa?

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Mr. CHAYES. I think that is again unfair to characterize the plan in that way. At one point I was consulted on the question whether Mr. Struelens was—whether his I visa—whether it was appropriately carrying an I visa, and I think I decided it was not. I think I testified here at some length about my subsequent participation in those events.

Mr. SOURWINE. All right, sir. In view of the shortage of time, Mr. Chairman, I have no more questions. I want to give Mr. Chayes this copy of the testimony of Miss Knight.

Mr. CHAYES. All right. Thank you very much.

Thank you, Senator.

Senator HRUSKA. Is that all?

Mr. SOURWINE. I have nothing further, Mr. Chairman.

Senator HRUSKA. Very well. Thank you for coming. Thank you, Mr. Counselor.

(Whereupon at 12:30 p.m., the committee stood in recess subject to the call of the Chair.)

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APPENDIX I

(The following letter and enclosure, referred to at page 299, was later ordered printed in the record as an appendix.)

DEPARTMENT OF STATE,
Washington, May 18, 1962.

MR. JULIEN G. SOURWINE,
Chief Counsel, Senate Internal Security Subcommittee,
Washington, D.C.

DEAR MR. SOURWINE: I am enclosing herewith a paper presenting a chronological listing of the actions taken by the Passport Office following the Supreme Court decision of June 5, 1961, upholding the constitutionality of section 7 of the Subversive Activities Control Act of 1950.

I had an incomplete list of these actions with me at the hearings held on Wednesday and you will remember that you requested it, and I believe it was made part of the record. Then you noticed that this earlier list only covered the actions taken to the end of December 1961 and Mr. Johnson provided a paper which was more or less informal, listing subsequent actions. When I returned to the office I compared these papers with my files, and I feel that there are a few references to conversations and opinions expressed in some intraoffice conferences within the Department which could be omitted without destroying the value of the chronological listing. Also, I believe the paper Mr. Johnson referred to and which was made part of the record is more valuable when translated into the chronological listing and added to it in the same style.

This is only a suggestion, but I do believe the enclosed document is better prepared and can be better understood than the two incomplete documents which are now in the record. For the sake of posterity, is there any chance of substituting this better and more complete documentation for the other two?

With best wishes,

Sincerely,

FRANCES G. KNIGHT, *Director, Passport Office.*

Enclosures.

CHRONOLOGY, JUNE 5, 1961, TO JANUARY 12, 1962

The following is the chronology of actions taken by the Passport Office following the Supreme Court decision of June 5, 1961, upholding the constitutionality of section 7 of the Subversive Activities Control Act of 1950 (50 U.S.C. 781 et seq.):

June 5, 1961.—Passport Office issued internal memorandum to withhold action on applications submitted by individuals where there is information reflecting present or recent past (5 years) Communist Party membership.

June 12, 1961.—Passport Office sent memo to Acting Legal Adviser, Mr. Meeker, through SCA outlining pertinent portions of the Internal Security Act (sec. 6 in particular) requesting views as to what action should be taken with respect to (1) pending applications from CP members, (2) those CP members who have passports, and (3) what actions and what procedures should be followed when law (sec. 6) becomes operative.

June 14, 1961.—Airgram (CG 1032) to all American diplomatic and consular posts, advising of Supreme Court decision, provisions of the law and directing all applications from individuals within purview of the law to be sent to Department.

June 22, 1961.—Memo from L to PPT advising that when law becomes effective PPT will be prohibited by penal sanctions to issue passports to CP members; advising there was no statutory basis for withdrawing outstanding passports and to process application just like the application from any other applicant.

June 27, 1961.—PPT advised by Legal Adviser's Office by telephone that Justice Frankfurter had granted stay on Communist Party petition for rehearing.

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June 27, 1961.—Internal instructions issued advising of Supreme Court stay and to continue recording procedures placed in effect on June 5, 1961.

July 18, 1961.—Airgram to all diplomatic and consular posts to process applications same manner as prior to June 5, 1961.

October 9, 1961.—Supreme Court dismisses CP petition for a rehearing on its June 5, 1961, decision.

October 10, 1961.—Passport Office issued a memorandum alerting personnel that all passport and renewal applications of persons within the purview of statute must be intercepted prior to any issuance and/or renewal as the case may be. All cases to be referred to the Legal Division of the Passport Office for handling.

October 10, 1961.—Passport Office sent airgram to all American diplomatic and consular posts advising of Supreme Court's dismissal of petition for rehearing and directing that applications from all persons within purview of law be forwarded to Department (Passport Office).

October 10, 1961.—PPT advised SCA (confirming oral info of October 9, 1961) of internal procedures for handling applications—advising our views that criminal act attaches as soon as individual applies for or uses passport.

October 11, 1961.—PPT advises chief executive officers, Puerto Rico, Guam, Virgin Islands and American Samoa of Supreme Court action, provisions of law, etc.

October 24, 1961.—PPT sent letter to Mr. J. Walter Yeagley, Assistant Attorney General, Internal Security Division, Department of Justice (through Legal Adviser) requesting views as to what action should be taken re withdrawal of passport from CP members (mentioning Flynn and Jackson—delegates to CPUSSR Congress).

October 25, 1961.—PPT answered in detail Mr. Yeagley's telephone request concerning PPT hearing procedures. He was also furnished statistics regarding number of passports issued to persons subsequent to June 16, 1958 (Kent-Briehl decision) who on the basis of FBI information are CP members or CP members within recent past (5 years prior to passport application).

November 1, 1961.—PPT requested I. and N.S. to withdraw passport of Elizabeth Gurley Flynn—FBI info reflected her return from Moscow on November 4 or November 5, 1961. Mr. Maroney, Internal Security Division, Department of Justice, advised.

November 3, 1961.—PPT advised by Mr. Chayes and Mr. Yingling (during conference re passport legislation) that PPT had no authority to withdraw Flynn passport—matter soley for Department of Justice.

November 3, 1961.—PPT countermanded request to I. and N.S. in Flynn matter. FBI and Justice advised.

November 16, 1961.—PPT drafted for SCA—Bontempo signature—reply to letter dated November 9, 1961, from Congressman Walter to Secretary regarding HICUA interest in section 6, Internal Security Act. Reply stated internal procedures and close liaison being maintained with Department of Justice.

November 30, 1961.—Passport Office sent memorandum to Mr. Abram Chayes transmitting two lists of persons who appear to be within the purview of 50 U.S.C. 785. The lists were compiled from the records of the Passport Office.

December 1, 1961.—Passport Office sent a memorandum to Mr. Abram Chayes recommending the withdrawal of passports issued to individuals on the national levels of the Communist Party leadership; recommending the issuing of appropriate letters to such individuals concerned, notifying them of the tentative withdrawal of their passports and affording them a hearing and right to appeal.

December 7, 1961.—Passport Office sent a memorandum to Mr. Abram Chayes recommending that the following statement be placed in all passport application forms, registration forms, agency notices, etc.:

"Section 6 of the Internal Security Act of 1950 (50 U.S.C. 785) provides a severe penalty (fine and/or imprisonment) for a member of the Communist Party of the United States who applies for a passport or for the renewal of a passport or who uses or attempts to use a passport."

December 7, 1961.—Meeting in Legal Adviser's office. Mr. Abram Chayes reviewed his conversations with the Department of Justice attorneys. Mr. Chayes advised Miss Knight of the Secretary's interest in not withdrawing passports but in having the statute enforced by means of criminal prosecutions in due course.

It was agreed that the Passport Office prepare a letter for Mr. Chayes' signature transmitting to Assistant Attorney General Yeagley for use in enforcement

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of the act, a list of persons holding valid passports who, on the basis of information supplied the Department by the FBI, appear to be within the purview of section 6 of the act.

Mr. Chayes also advised that he would soon assign someone to check the Passport Regulations and was informed by Miss Knight that a complete revision of the Executive order and the Secretary's regulations on the issuance of passports had been made by the Passport Office and had been held in abeyance for over a year pending some action either by the Department or legislative branch. It was agreed that the revisions be checked and brought up to date by the Passport Office. Mr. Chayes agreed to review the Passport Office presentation as a matter of urgency.

December 11, 1961.—PPT sent 2 copies Lists A & B (Persons within sec. 785) to Mr. Yeagley under Mr. Chayes' signature.

December 15, 1961.—Mr. Chayes cleared the proposed warnings to be inserted in Passport Office forms and a printing order was processed immediately by the Passport Office. New placards, cards, signs and forms were among the documents to have the warning inserted.

December 15, 1961.—Passport Office sent a memorandum to Mr. Abram Chayes transmitting an original and one copy of the draft of a new Executive Order and rules and regulations by the Secretary which are to supersede Executive Order No. 7856 issued on April 2, 1938, and regulations issued pursuant thereto at intervals since April 2, 1938.

December 28, 1961.—Mr. Lowenfeld of L called Miss Knight concerning L's redraft of proposed regulations stating he wished to set up a meeting concerning this draft between Miss Knight, Mr. Johnson, Mr. Meeker, and himself.

December 29, 1961.—Meeting in the Legal Adviser's office with Mr. Meeker and Mr. Lowenfeld regarding the immediate issuance of revised regulations dealing with the denial of passports to Communists.

It was decided that sections 51.135 through 51.170 of the regulations on issuance of passports be reviewed and revised prior to the completion of a comprehensive study of passport regulations and the Executive order of 1938.

January 4, 1962.—L's proposed regulations were transmitted to SCA as a final draft to be submitted to the Secretary for approval January 5, 1962, and referred for immediate publication in the Code of Federal Regulations. (See Mr. Cieplinski's memo to Mr. Jones of January 5, 1962).

January 4, 1962.— Memo from Miss Knight to Mr. Cieplinski, SCA (copy to Mr. Lowenfeld January 5, 1962) reiterating her view that she could not convince herself that she did not have reason to believe an individual was a Communist after reading classified information indicating he was one.

January 5, 1962.—Memo from Mr. Michel Cieplinski, Acting Administrator, SCA to Mr. Roger Jones, Deputy Under Secretary proposing revision of L's draft of section 51.135–51.170 of Passport Regulations and requesting that approval thereof be withheld pending reconciliation of differences of opinions concerning them.

January 5, 1962.—Memo from Miss Knight to Mr. Chayes transmitting L's draft of section 51.135–51.170 in required format and inserting citation of statutory authority and statement relating to effective date of the regulations.

January 5, 1962.—Letter from J. Walter Yeagley, Assistant Attorney General to Mr. Roger Jones, Deputy Under Secretary stating that the Department of Justice was of the opinion that the Department of State in denying a passport should conduct a hearing based upon an open record and that the statute (50 U.S.C. 785) does not contemplate the denial of passports on the basis of information which cannot, for security reasons, be disclosed.

The Department of Justice also indicated that if the applicant sought to contest the denial he would, in their view, be entitled under the statute to be confronted with the precise information against him and to be apprised of the source of such information. Mr. Yeagley further indicated in such cases where it is inconsistent with security interest to divulge information as to membership, the Secretary of State can properly consider that he does not have the "knowledge or reason to believe" which the statute makes a condition for the requirement that he deny a passport.

January 5, 1962.— Letter from J. Walter Yeagley, Assistant Attorney General, to Mr. Jones expressing the views of the Department of Justic with respect to procedures to be followed by the Department of State in administering section 6 of the Internal Security Act of 1950.

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January 6, 1962 (Saturday).—Meeting at the request of Mr. Meeker, Deputy Legal Adviser concerning the proposed Passport Regulations. Present were Mr. Meeker and Mr. Lowenfeld of L, Mr. Bryan of SCA and Miss Knight and Mr. Johnson of PPT. Present during part of the meeting was Mr. Roger W. Jones, Deputy Under Secretary. Meeting was held to reconcile "difference" of views between L, PPT and SCA over the regulations, in particular, with respect to the denial of passports and the use of classified information.

January 9, 1962.—Memo to PPT from Mr. Lowenfeld of L transmitting the letter drafted by L to be sent to passport holders whose passports are to be revoked. Memo indicates Secretary had approved letter.

January 10, 1962.—Mr. Lowenfeld advised by phone that revocation letter (referred to above) had been cleared with Department of Justice.

January 12, 1962.—Press release No. 24 of January 12, 1962 announcing the promulgation of the revised section 51.135–51.170 of the Passport Regulations. The press release also announced Department's plan to move to revoke outstanding passports of certain leading members of the CP, U.S.A.

January 12, 1962.—Revised section 51.135–51.170 of the Passport Regulations were published in the Federal Register of January 12, 1962, volume 27, No. 8.

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APPENDIX II

TRANSCRIPT OF PROCEEDINGS—INFORMAL PASSPORT HEARING
In the Matter of: ELIZABETH GURLEY FLYNN

(A list of exhibits which are mentioned in the following testimony has been deleted to save space.)

TRANSCRIPT OF PROCEEDINGS

(Informal Passport Hearing)

IN THE MATTER OF ELIZABETH GURLEY FLYNN

DEPARTMENT OF STATE,
April 24, 1962.

Hearing in the above-entitled matter was convened at 10:06 a.m., Mr. Max Kane, Federal Power Commission, presiding as hearing examiner.

Appearances:

For Mrs. Flynn: Mr. Joseph Forer, 711 Fourteenth Street NW., Washington, D.C.

For the Department of State: Mr. Louis A. Palmer; Mr. Carol H. Seeley, Jr.; and Mr. James F. Brooks.

Reported by: E. C. Moyer, E. L. Koontz.

PROCEEDINGS

The HEARING EXAMINER. Please come to order. This hearing is being held in connection with the revocation by the Secretary of State of the U.S. passport No. 2016926 issued on March 10, 1960, to Mrs. Elizabeth Gurley Flynn. By letter dated January 22, 1962, Mrs. Flynn was advised of the said revocation which was based on the ground that her use of such passport would be in violation of section 6 of the Subversive Activities Control Act (50 U.S.C. 785). She was further advised in said letter of her right to obtain a review of the revocation decision in accordance with the provisions of title 22, C.F.R. 51.135–.170, of the Regulations of the Department of State.

The records of the State Department indicate that by letter dated February 16, 1962, counsel for Mrs. Flynn requested a hearing on this matter in accordance with the applicable regulations. By letter dated March 16, 1962, he was notified that a hearing as provided for in 22 C.F.R. 51.138 was scheduled for 10 a.m., April 24, 1962, at the Passport Office, Washington, D.C.

This hearing officer is presiding pursuant to a designation from the State Department dated April 21, 1962. We will now be in order for counsel to tender their appearances for the record.

Mr. FORER. My name is Joseph Forer, 711 14th Street NW., Washington, D.C. I represent Mrs. Flynn.

Mr. PALMER. Mr. Examiner, my name is Louis A. Palmer, and I am in the Legal Branch of the Passport Office, and I represent State Department in this matter. I will be assisted by Mr. Carol H. Seeley and Mr. James F. Brooks. This is Mr. Seeley and this is Mr. Brooks.

The HEARING EXAMINER. Gentlemen, before we proceed with the hearing I would like to ask whether that statement that I have just given the reporter is correct, or, if it is incorrect, I would like to have any of the incorrect details corrected. Mr. Forer?

Mr. FORER. It seems correct to me, Mr. Examiner.

The HEARING EXAMINER. Mr. Palmer?

Mr. PALMER. I believe that is correct. I believe, Mr. Examiner, you had copies of the letters made available to you on which that was based.

The HEARING EXAMINER. That is right.

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Mr. PALMER. And those letters will be made a part of the evidence in this case.

The HEARING EXAMINER. Now, gentlemen, I think that it would expedite and possibly clarify these proceedings if the issues that are involved would be clearly drawn. In the absence of any pretrial in this case, I think it would be helpful if each side in the proceeding in an opening statement would state for the record the following: What he conceives the issues to be, including the question of going forward with the evidence and burden of proof; indicate in a summary mainly what the nature of the evidence which is to be submitted consists of; and, if there are going to be any live witnesses, the identity of such witnesses and the general nature of the testimony to be given by each. I realize that if such evidence is going to be extensive that this might take some time, but in the final analysis I believe it would expedite the hearing. I would like to have a statement now, Mr. Forer and Mr. Palmer, and in that order, as to who you thing ought to proceed first.

Mr. FORER. Well, I think the State Department should proceed first.

The HEARING EXAMINER. I am of that opinion, too. Do you have any objection to that procedure, then, as the revoker, if we can put it that way, that the State Department might proceed first?

Mr. PALMER. Mr. Examiner, we had anticipated proceeding in this manner. If it would please the Examiner, this matter today before you concerns the revocation of a passport, as you have so ably stated. By letter dated January 22, 1962, Mr. Edward J. Hickey, Acting Director of the Passport Office, informed Mrs. Elizageth Gurley Flynn, that passport No. 2016926 issued to her on March 10, 1960, had been revoked. She was advised that the Department of State believed that her use of the passport would be in violation of section 6 of the Subversive Activities Control Act (50 U.S.C. 785). Mrs. Flynn was also requested to surrender her passport not later than 30 days from the date of the letter. She has not complied with that request.

In the letter of revocation Mrs. Flynn was informed of the procedures for review available to her under the passport regulations promulgated on January 12, 1962, and which appear in title 22, Code of Federal Regulations, sections 15.135 through 51.170. I herewith make available to you, Mr. Examiner, a copy of those regulations, and to Mr. Forer a copy also.

Mr. FORER. Thank you.

Mr. PALMER. Now at this hearing the Passport Office is prepared to show by documentary evidence and by testimony that Mrs. Flynn has been publicly identified as a member and as an official of the Communist Party of the United States of America over a long period of years. The exhibits which we will offer into the record of these proceedings will show that Mrs. Flynn has held various and sundry positions on the executive level of the party. She is and has been since March 18, 1962, national chairman of the Communist Party of the United States of America.

We will present a witness, a Mr. Gash, and I might add parenthetically here, Mr. Examiner, that there are a number of witnesses that we anticipated and requested to attend this hearing, but who would not attend the hearing because we had not and you had not the subpena power. However, as Mr. Gash will tell you, he comes here on his own and he will testify as to public statements which were made by Mrs. Gurley Flynn regarding her affiliation with the Communist Party of the United States of America.

Mr. Chairman, it is the position of the Passport Office that on the basis of all the evidence which will be submitted to you today the Passport Office has reason to believe—

1. That Mrs. Flynn has been a member of the Communist Party of the United States of America since at least 1937.

2. That Mrs. Flynn for a number of years has been an official of the Communist Party of the United States of America.

3. That Mrs. Flynn has publicly identified herself as a member, an officer, and an official representative of the Communist Party of the United States of America.

4. Further, that Mrs. Flynn was a member of the Communist Party of the United States of America on October 20, 1961, the day that the order of the Subversive Activities Control Board requiring the Communist Party of the United States to register under the provisions of the Internal Security Act of 1950, became final.

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5. Also that Mrs. Flynn was a member and an officer of the Communist Party of the United States of America on November 20, 1961, the date on which the Communist Party of the United States of America was required to register.

6. Also that Mrs. Flynn was a member and an officer of the Communist Party of the United States of America on November 30, 1961, the date on which officials of the Communist Party of the United States of America were required to register under the Statute.

7. And also that Mrs. Flynn was a member and an officer of the Communist Party of the United States of America on December 20, 1961, when individual members of the Communist Party of the United States of America were required to register under the Act.

Finally, the Passport Office has reason to believe that Mrs. Flynn was not only a member and an official on the dates I have mentioned but she was also a member and an official of the Communist Party of the United States of America on January 22, 1962, the day her passport was revoked, and that she continues to be a member of the Communist Party of the United States of America. She is, therefore, not entitled to passport facilities under the law.

Mr. Examiner, we believe that when you have considered the evidence that you will agree with us and that you will recommend that this revocation of Mrs. Flynn's passport be continued.

Now, I believe, Mr. Examiner, that you requested a memorandum for you in this matter. Is that correct? Did you want that——

The HEARING EXAMINER. Well, I would have memorandums in the matter submitted I believe after the hearing. I think that will be in order.

Mr. PALMER. We are prepared to submit it at this time, or we can wait. It is at your pleasure.

The HEARING EXAMINER. I think what you might do is to serve Mr. Forer with a copy of the memorandum and then I will take it after the hearing.

Mr. PALMER. Yes, sir.

The HEARING EXAMINER. Mr. Palmer, I just want to ask one question, if you don't mind. Is it the position of the State Department in these proceedings that membership in the Communist Party would be sufficient, I mean establishing membership in the Communist Party would be sufficient to justify the revocation of the passport?

Mr. PALMER. I think we don't ever have to go any further than to show you that we have reason to believe that she is a member. I believe this is what the regulation and the law both provide.

The HEARING EXAMINER. Well, I see. In your estimation of the issue, that would be sufficient.

Mr. PALMER. Yes, sir. Yes, sir.

The HEARING EXAMINER. Mr. Forer.

Mr. FORER. I don't intend to offer any witnesses. My first position is one that I am sure you are not going to rule on but I will just mention it for the record. My position is that section 6 of the Subversive Activities Control Act is unconstitutional, but I am sure we all agree that an administrative agency can't rule on that matter.

Aside from that, since Mrs. Flynn has a passport and since the Department is revoking the passport, it seems to me that the burden is on the Department to prove its case, namely to prove that Mrs. Flynn is disqualified by reason of section 6.

I just want to add one other thing as to the issue. I do not agree with Mr. Palmer as to the scope of the issue. He said that the issue is whether or not the State Department has reason to believe that Mrs. Flynn is a member of the Communist Party. Under section 6 of the Subversive Activities Control Act, persons who are members of the Communist Party are disqualified from applying for or using passports during the time of their membership, and that, it seems to me, sets the issue. In other words, if they don't prove that Mrs. Flynn is a member of the Communist Party, then they haven't proved that she is disqualified under section 6.

Now, it is true that the statute has a separate sentence—it is in the same section—I think it is in the same section—which makes it a felony for members of the State Department to issue passports to persons who they have reason to believe are members of the Communist Party. So you have an odd dichotomy. On the one hand a person is entitled to a passport unless in fact he is—and, as we know, the Supreme Court has held that it is a constitutionally protected

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interest. On the other hand, he may be entitled to the passport and yet the officials of the State Department might be under criminal sanction not to give it to him. But I guess that is their problem, and as far as—it seems to me as far as the applicant is concerned he has a right to the passport unless he is proved to be disqualified. Now it may be that that issue won't amount to anything in this particular case. I just wanted to state what my position is.

The HEARING EXAMINER. I just wanted to ask you so that I can clarify my own thinking on it. Is your position then that if, notwithstanding I mean for a moment what section 6——

Mr. FORER. Yes.

The HEARING EXAMINER. That if it is established, say, by a preponderance of the evidence that the applicant is a member of the Communist Party, then the revocation of the passport is in accordance with the regulations in the law?

Mr. FORER. It is in accordance with section 6 and in accordance with the Federal regulations. I mean, assuming——

The HEARING EXAMINER. I mean, as far as——

Mr. FORER. Of course, I suppose you could raise a problem, and again it may not come up in this case, as to what is meant by member of the Communist Party in section 6. Now in the Smith Act cases, as you probably know, where persons have been charged with membership in an organization, known membership in an organization advocating the violent overthrow of the Government, namely the Communist Party, the Supreme Court interpreted that provision of the Smith Act to mean that the membership was an active membership. And then in a similar situation in the deportation statute, under the Immigration and Nationality Act, where it is cause for deportation to be a member of the Communist Party——

Mr. PALMER. Mr. Chairman——

The HEARING EXAMINER. I just want——

Mr. FORER. I was just trying to explain one of the issues may be the nature of the membership.

The HEARING EXAMINER. Mr. Forer, I don't think that will be a relative issue of the proceeding as far as factfinding. These may be legal issues——

Mr. FORER. The only thing I point out is it may be relative as a finding of fact—it may be that it is a person who is either an active member in the terms of the *Scales* case or more than a nominal member in the terms of the *Rothwalt* case.

Mr. PALMER. If I might interject along this line, if the Chair has any difficulty with this problem you might see the case of *Killian* v. *the United States*, decided by the Supreme Court in December on this issue. I think it is irrelevant here.

The HEARING EXAMINER. I think that the memorandum submitted to me and the brief——

Mr. FORER. I was just trying to answer your question as to whether merely showing membership was enough. Maybe it is not. Maybe the statute has not been interpreted enough.

The HEARING EXAMINER. I think that clarifies some of these things in my mind.

Mr. Palmer, do you want to proceed with your case?

Mr. PALMER. Yes, sir.

Mr. Chairman, if Mrs. Flynn were here, we had intended to ask her to take the stand. She is not here. I note that for the record. We would have asked her if she were a Communist. Perhaps Mr. Forer would answer that question for her. I would doubt it.

I would like to present at this time, Mr. Examiner, a number of documents, the first one of which is the original passport application, form DSP–11, which was executed by Elizabeth Gurley Flynn on December 30, 1959, at New York, N.Y., and pursuant to this application passport No. 2016926 was issued on March 10, 1960. The application is herewith presented for admission into the record.

Mr. FORER. No objection.

The HEARING EXAMINER. No objection. Mark it.

Mr. PALMER. If there is no objection, Mr. Examiner, we would like to offer and have permission to withdraw this original and substitute therefor a copy.

Mr. FORER. No objection whatsoever.

The HEARING EXAMINER. The passport application, form DSP–11, of Elizabeth Gurley Flynn, dated December 30, 1959, is admitted into evidence and marked as "Exhibit 1," with leave to substitute a copy without judgment.

Mr. PALMER. Thank you.

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(Passport application, form DSP–11, executed by Elizabeth Gurley Flynn, December 30, 1959, at New York, N.Y., admitted in evidence and marked as "State Department Exhibit 1," with leave to substitute a copy.)

Mr. PALMER. Now we have here, Mr. Examiner, a copy of a letter which is from the Acting Director of the Passport Office, dated January 22, 1962, notifying Mrs. Elizabeth Gurley Flynn of the revocation of her passport No. 2016926, and I believe the chairman has had opportunity to see a copy of this previously We offer this for admission into the record.

Mr. FORER. No objection.

The HEARING EXAMINER. No objection.

Mr. FORER. May I make an inquiry? Are we using Roman or Arabic numbers for this?

The HEARING EXAMINER. I prefer Arabic.

Mr. PALMER. Those are Arabic.

The HEARING EXAMINER. I have been using Arabic. That is received in evidence and marked as "Exhibit 2."

(Carbon copy of letter from Acting Director Hickey, Passport Office, to Mrs. Flynn, dated January 22, 1962, admitted in evidence and marked as "State Department Exhibit 2.")

Mr. PALMER. Herewith, Mr. Examiner, is a letter dated February 16, 1962, which is signed by Mr. Joseph Forer, attorney at law, which indicates that he represents Mrs. Elizabeth Gurley Flynn, which requests a hearing in this matter.

Mr. FORER. No objection.

The HEARING EXAMINER. Letter dated February 16, 1962, from Mr. Joseph Forer to Mr. Hickey, Acting Director of the Passport Office, indicating representation, received in evidence and marked as "Exhibit No. 3."

(Letter from Joseph Forer, dated February 16, 1962, to Edw. J. Hickey, Passport Office, admitted in evidence and marked as "State Department Exhibit 3.")

Mr. PALMER. This is a copy of a letter from the Director, Passport Office, dated March 16, 1962, which advises Attorney Joseph Forer that hearing was scheduled in Mrs. Flynn's case for 10 a.m. on April 24, 1962, and I move that this be admitted into the record.

Mr. FORER. No objection.

The HEARING EXAMINER. No objection. Letter dated March 16, 1962, to Mr. Forer from Director of the Passport Office advising of hearing set for April 24, received in evidence without objection and marked "Exhibit No. 4."

(Carbon copy of letter from Director, Passport Office, dated March 16, 1962, to Mr. Forer admitted in evidence and marked as "State Department Exhibit 4.")

Mr. PALMER. This next exhibit, Mr. Chairman, consists of 27 pages of testimony by Mrs. Elizabeth Gurley Flynn before the Subversive Activities Control Board on June 25 and 26, 1952, in the case of *The Attorney General of the United States* v. *The Communist Party of the United States of America*, docket No. 51–101. These pages, which are excerpts from the record, have been certified by the Chief Clerk of that Board as being true and correct. I would like to draw your particular attention in this document to pages 13658, 13659, and 13660.

The HEARING EXAMINER. Just a moment, Mr. Palmer. Have you a copy for Mr. Forer?

Mr. FORER. I don't need a copy.

Mr. PALMER. I have a copy I can give him.

Mr. FORER. Can you lend it to me?

Mr. PALMER. I don't have it here.

Mr. FORER. Never mind.

The HEARING EXAMINER. I think it would help matters if he had a copy of these that are being submitted for the record. Are you offering this in evidence, Mr. Palmer?

Mr. PALMER. Yes, sir.

Mr. FORER. I have no objection.

Mr. PALMER. We would like for the record to direct your particular attention to some certain of the pages here. As I was about to say——

The HEARING EXAMINER. I just want to mark it in evidence first.

Mr. PALMER. Yes, sir; go ahead.

Mr. FORER. Excuse me—one thing. I am sure we will all agree that this is not her complete testimony before the Board.

The HEARING EXAMINER. I think this is indicated excerpts.

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Mr. PALMER. This is not.

The HEARING EXAMINER. We will mark it excerpts, then, for the record.

Mr. FORER. I have no objection.

The HEARING EXAMINER. The excerpts of testimony given by Mrs. Elizabeth Gurley Flynn before the Subversive Activities Control Board—is that what it is?

Mr. PALMER. Yes, sir.

The HEARING EXAMINER. On June 25 and June 26, 1952, received in evidence, without objection, and marked "Exhibit No. 5."

(Photostatic copies of excerpts of testimony of Mrs. Flynn before Subversive Activities Control Board, June 25–26, 1952, received in evidence and marked "State Department Exhibit 5.")

Mr. PALMER. We would like to direct your particular attention, Mr. Examiner, to pages 13658, 13659, and 13660, in which Mrs. Flynn states that she first joined the Communist Party in February 1937; and that in pages 13662, 13663, 13664, 13665, and 13666 Mrs. Flynn stated that she was a member of the Communist Party National Committee at the time of the hearing, that is June 25, 1952, that she was first named to that post in 1938, and had been a member of the national committee to the date of her testimony, that would be from 1938 to 1952, and that she held other functionary posts in the Communists Party such as member of the national board, or political bureau, chairman of the Women's Commission of the Communist Party, chairman of the Defense Commission of the Communist Party, and she testified that she has been a steady columnist for the Daily Worker since 1937, and has written a great number of Communist Party pamphlets, and testified that she spoke almost continuously for the Communist Party, being the most traveled speaker and spoken more often than any other party member.

At page 13668 Mrs. Flynn testified that she always spoke as a Communist, she had lectured at Communist Party schools, and she ran for Congress at large in the State of New York in 1942 on the Communist Party ticket.

At page 13673 she stated she was a Communist Party delegate to the Women's Congress for Peace in Paris.

At pages 13678 and 13679 she stated she visited England in 1945 and attended British Communist Party conventions as a visitor, and in France met a number of French Communist leaders.

At an excerpt at pages 13682, 13683, 13684, and 13685 in 1959 she indicates she went to Paris for the 80th birthday of Marcel Cachin. She saw Communist Party leaders while she was there, and in 1950 she represented the Communist Party of the United States of America and the Daily Worker at the Congress of the French Communist Party in Paris. She also spoke at a London Communist Party Congress, she indicated that the Communist Party paid her expenses on these trips, except for the $19 the French Communist Party gave to all foreign delegates.

At page 13691 Mrs. Flynn testified that at one time during her membership the Communist Party of the United States of America affiliated with the Communist Internationale, a federation of world Communist parties. This affiliation ended in 1940.

At pages 13703 and 13704 Mrs. Flynn stated that as a member of the National Committee of the Communist Party of the United States of America she testified in the case of *the United States* v. *Eisler* as a defense witness, testified she regularly attended meetings of the national committee.

At page 13731 she testified that during her membership of the Communist Party she had spoken at a great many meetings.

At page 13831 Mrs. Flynn testified that as a Communist she had attacked J. Edgar Hoover and the FBI.

At page 13858 Mrs. Flynn testified that she looks upon communism "as an ultimate goal of the human race and socialism as an immediate objective."

At pages 13919 and 13920 Mrs. Flynn admitted membership in the Communist Party in 1937, and that she was elected to the National Committee of the Communist Party in 1938. She testified that she had worked with Communists since the establishment of the Communist Party and had been active in the American Labor Movement since 1912, but having earned a certain recognition in the American progressive, labor, and socialist movement, which was responsible for rapid promotion in the Communist Party. The constitution in the Communist Party required 2 years' membership to be on the national committee. She was elected to the national committee, she was elected at the convention, the only place she said where this could be done.

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Did you find a copy of that?

The HEARING EXAMINER. Do you have a copy?

Mr. FORER. Yes. I have gone over it. I can return it.

Mr. PALMER. I have a copy I can give you.

Mr. FORER. That would be handy.

Mr. PALMER. Mr. Examiner, I have here a photostatic copy of the transcript of testimony by Elizabeth Gurley Flynn before the U.S. District Court, Southern District of New York, where she testified on March 8, 1962, and this testimony was given on examination in supplementary proceedings in the case of *The United States* v. *Elizabeth Gurley Flynn*, criminal docket No. 136–137. I do not have an extra copy of this. We attempted to get one but were unsuccessful.

I would like to move now that this be admitted in evidence, and then I would like to direct your particular attention to certain statements that were made.

Mr. FORER. Will you give me one moment?

Mr. PALMER. Certainly.

The HEARING EXAMINER. Are those excerpts from her testimony?

Mr. PALMER. This is the testimony that she gave.

The HEARING EXAMINER. The verbatim testimony?

Mr. PALMER. In a supplementary proceeding, yes, sir.

Mr. FORER. I certainly do not object to the authenticity of this at all, and I will gladly concede that it is authentic. I do object that it is not relevant.

The HEARING EXAMINER. Mr. Forer, on what basis do you claim that it is not relevant? Does it apply to any Communist Party membership admissions?

Mr. FORER. I do not see that it does. I don't see that it does. Also, I may say I am not sure it is competent either. On the one hand the Government brings her in and examines her about her earnings, as to whether or not she can pay a fine. I don't know whether that can be used against her in a civil matter.

Mr. PALMER. Mr. Chairman, we offer this to show her source of income as coming from the Communist Party.

Mr. FORER. I consider that as irrelevant.

Mr. PALMER. This is her testimony in the Federal district court in New York, and the Justice Department were willing to send a man down who could authenticate this testimony, and Mr. Forer has been good enough to say that.

Mr. FORER. Oh, it is authentic. No question about that.

Mr. PALMER. That is the authenticity. Now as to relevancy, our argument is based on her own statements which are in there.

The HEARING EXAMINER. Well, as long as there is no objection to the authenticity of the document, I imagine that I will take it for what it is worth on the question of relevancy, and it is admitted and marked "Exhibit No. 6."

(Photostatic copy of testimony of Mrs. Flynn before U.S. District Court, Southern District of New York, March 8, 1962, admitted in evidence and marked as "State Department Exhibit 6.")

Mr. FORER. If you will excuse me, just one thing for my notes. How much income does it show there?

The HEARING EXAMINER. Do you want to look at this, Mr. Forer?

Mr. FORER. Yes.

The HEARING EXAMINER. Off the record.

(Discussion off the record.)

Mr. PALMER. I would like to direct your particular attention to what is on page 3, the third question, wherein Mrs. Flynn was asked: "From whom do you receive welfare payments?" And she answered "I receive $100. from the welfare fund of the Communist Party, and a very small additional amount, never to exceed $20 a week for any expenses I may have, taxi or anything like that, if I would go to speak at a meeting or something."

Now, Mr. Chairman, we have here a copy of the Sunday, February 11, 1962, page 3, of the issue of the newspaper, the Worker. This document contains an editorial entitled "Our Democratic Heritage," which indicates the close ties which exist between that newspaper and the Communist Party of the United States of America. I direct your attention to the masthead which appears thereon, and Mrs. Elizabeth Gurley Flynn's name appears as a member of the editorial staff. And I direct your particular attention to this editorial, the third paragraph of which reads:

"The relationship between the Worker and the Communist Party is no deep, dark mystery or secret affair. It is a proud relationship and openly entered into. The Worker reflects in its editorial policy the viewpoint of the Commu-

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nist Party on the urgent and fundamental issues of the day and on fundamental socialist aims. We believe this viewpoint demands a hearing in the market place of ideas in the national interest and in the service of democracy."

Mr. Chairman, I do not have copies of this.

The HEARING EXAMINER. Are you offering that?

Mr. PALMER. Yes. I offer that in evidence.

Mr. FORER. I concede the authenticity of the document. I object on the ground that it is irrelevant and immaterial.

The HEARING EXAMINER. No objection being made to the authenticity, I will accept this for what it is worth and mark it as "Exhibit No. 7."

(Photostatic copy of p. 3, the Worker, Sunday, Feb. 11, 1962, admitted in evidence and marked "State Department Exhibit 7.")

Mr. PALMER. I have here an article taken from the May 6, 1957, issue of the Daily Worker, captioned "New CP National Committee Reports on First Meeting." This article reflects that Elizabeth Gurley Flynn was elected to the full National Executive Committee of the Communist Party of the United States of America. The article further indicates that she was elected in the hopes that she would serve after completing her 3-year sentence under the Smith Act. The release date was indicated in the article as being May 27.

And I move that this be admitted.

The HEARING EXAMINER. Will you show that to Mr. Forer, please?

Mr. FORER. Yes, I have it here. I conceded the authenticity of it. I object to its relevancy. As I understand the article, it shows that Miss Flynn was elected to the National Committee of the Communist Party, according to the article, on April 27 and 28, but at that time she happened to be in the Federal Women's Prison at Alderson, W. Va.; but I concede the authenticity of the document.

Mr. PALMER. I believe also the article points out that they hoped she would serve after she was released.

Mr. FORER. It does not quote her. I think it is irrelevant and incompetent as well.

The HEARING EXAMINER. No objection being made to the authenticity of the document, it is received in evidence and marked as "Exhibit No. 8" constituting a portion of the Daily Worker issue of May 6, 1957.

(Photostatic copy of portion of Daily Worker, May 6, 1957, admitted in evidence and marked "State Department Exhibit 8.")

Mr. PALMER. Here, Mr. Chairman, is an article from the October 28, 1957, issue of the Daily Worker, captioned "CCNY Head Urged To Reconsider Ban on Gurley Flynn Talk." This article describes Mrs. Flynn as a member of the Communist Party National Party Committee, who 5 months before served under the Smith Act. I submit it.

Mr. FORER. I concede its authenticity; I object on the basis of its relevancy and materiality.

The HEARING EXAMINER. No objection being made to the authenticity of the portion of the Daily Worker issue of October 28, 1957, said article is admitted in evidence and marked "Exhibit 9."

(Photostatic copy of portion of Daily Worker, Oct. 28, 1957, admitted in evidence and marked as "State Department Exhibit 9.")

Mr. PALMER. I have here, Mr. Examiner, an article from the January 13, 1958, issue of the Daily Worker, captioned "Gurley Flynn Says: Build Worker." This article is under the byline of Elizabeth G. Flynn. Mrs. Flynn states:

"It is with a heavy heart and feelings of profound regret which I know are shared by all of my coworkers in the national committee and the national leadership of the Communist Party that I address these words of warmest greeting and deep appreciation to our Daily Worker, which suspends today."

I move the admission of this document.

Mr. FORER. I concede its authenticity but make the same objections on relevancy and materiality.

The HEARING EXAMINER. No objection being made to the authenticity of the portion of the Daily Worker of January 13, 1958, the same is admitted into evidence, marked "Exhibit 10."

(Photostatic copy of portion of Daily Worker, Jan. 13, 1958, admitted in evidence and marked as "State Department Exhibit 10.)

Mr. PALMER. I have here, Mr. Examiner, a two-part article from the—it is an article which is separated, the document is separated into two parts, an article from the July 18, 1958, issue of the Worker captioned "CP Parley Discusses Key

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Issues And Party's Policies and Role." This article discusses a meeting of the National Committee of the Communist Party here at New York City on June 28 and 29, 1958, at which time, quoting from the article "comrades Elizabeth Gurley Flynn of New York and Sam Kushner of Chicago" made a report "in behalf of the special subcommittee on the question of moving the party's national headquarters in Chicago." It also names Mrs. Flynn as national field organizer for the Communist Party of the United States of America. And I move the admission of this article.

Mr. FORER. The same concession as to authenticity and the same objection as to relevancy and materiality.

The HEARING EXAMINER. No objection being made to the authenticity of the document constitution (sic) a portion of the Worker—off the record.

(Discussion off the record.)

The HEARING EXAMINER. Portion of the Worker issue of July 13, 1958, admitted its authenticity being conceded, and marked "Exhibit 11."

(Photostatic copy of portion of the Worker, July 13, 1958, admitted in evidence and marked as "State Department Exhibit 11.")

Mr. FORER. Off the record.

(Discussion off the record.)

Mr. PALMER. On the record.

Mr. Forer, there seems to be some confusion here as to the relationship between the Worker and the Daily Worker, and it is my understanding that the Daily Worker preceded the Worker. The Daily Worker ceased, as was shown by exhibit 10, on January 13, 1958.

Now, would you be kind enough here to explain and we will stipulate that what you say is what happened, so that the examiner will understand the relationship between the Worker and the Daily Worker?

Mr. FORER. I will be glad to stipulate because it is a matter of public record. The publication was one publication really. It was called the Daily Worker for its daily issue and then its Sunday issue was called the Worker, or sometimes the Sunday Worker, but it was one paper. As indicated by exhibit 10, in January of 1958 the paper, mostly I gather because of the financial difficulties, according to the article, stopped publishing daily but continued to publish the weekly or Sunday issue, so I will be certainly happy to stipulate that the Worker and the Daily Worker are one and the same publication.

Mr. PALMER. I recommend that the stipulation be accepted.

The HEARING EXAMINER. It is so stipulated in the record.

Mr. PALMER. Now I have here, Mr. Examiner, an article written by Elizabeth G. Flynn, taken from the March 8, 1959, issue of the Worker, and the byline of this article describes her as a member of the National Committee, CPUSA, and I move that this be admitted.

Mr. FORER. Same concession as to authenticity, and the same objections.

The HEARING EXAMINER. In view of the concession of authenticity, exhibit No. 12 is admitted into evidence.

(Photostatic copy of article from the Worker, Mar. 8, 1959, admitted in evidence and marked as "State Department Exhibit 12.")

Mr. PALMER. I would like to present now for admission an article from the December 20, 1959, issue of the Worker, captioned, "CP Charts Course for Peaceful Coexistence, Peace Economy." This article, Mr. Examiner, discusses the 17th National Convention of the Communist Party and states that Elizabeth Gurley Flynn was elected one of the vice chairmen of the Communist Party.

Mr. FORER. Same concession, same objections.

The HEARING EXAMINER. Portion of the Worker, issue of December 20, 1959, is admitted into evidence and marked "Exhibit 13," on concession of its authenticity.

(Photostatic copy of article from the Worker, Dec. 20, 1959, admitted in evidence and marked as "State Department Exhibit 13.")

Mr. PALMER. I have here an article from the July 17, 1960, issue, which is on two pages, Mr. Examiner, and this is from the Worker and it is captioned, "Elizabeth Gurley Flynn, a Speech to the Rumanians." This article is a speech delivered by Mrs. Flynn to the Third Congress of the Rumanian Workers Party in Bucharest on June 24, 1960, and Mrs. Flynn states therein: "I bring you the warmest comradely greetings from the Communist Party U.S.A." And then at another point, "I am seeing some comrades here for the first time in over 10 years, and I greet them heartily in the name of our party." At another point, "We Communists who live in capitalist countries, congratulate you, dear comrades, on

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your splendid achievements, which are an inspiration and an example to all of us." Mrs. Flynn concludes her speech by saying:

"Long live international solidarity!

"Long live the U.S.S.R. and all the countries in the socialist camp!

"Long live socialism!"

And I move that this be admited into the record, Mr. Chairman.

Mr. FORER. Same concession, same objections.

The HEARING EXAMINER. Portion of the Worker dated Sunday, July 17, 1960, page 7, and continuation, is received in evidence, on concession of authenticity, and marked "Exhibit 14."

(Photostatic copy of article from the Worker, July 17, 1960, admitted in evidence and marked as "State Department Exhibit 14.")

Mr. PALMER. I have here a copy of an article from the March 19, 1961, issue of the Worker, captioned "Elizabeth Gurley Flynn Named Chairman of CP." This article states that Mrs. Flynn was elected Chairman of the Communist Party of the United States by the national committee over the weekend—and I might point out here that the 19th of March is a Monday.

Mr. FORER. Same concession, same objections.

The HEARING EXAMINER. Portion of the Worker, issue of March 19, 1961, is admitted and marked "Exhibit 15," on concession of authenticity.

(Photostatic copy of article from the Worker, Mar. 19, 1961, admitted in evidence and marked "State Department Exhibit 15.")

Mr. PALMER. I have a copy here, Mr. Examiner, of an article by Will Lissner, which appeared in the New York Times on June 9, 1961, concerning a news conference for the day before. We requested Mr. Lissner to appear here as a witness and he refused to so appear because we had not subpena power. This article describes Mrs. Flynn as national chairman, Communist Party of the U.S.A., and it states that Mr. Lissner attended that news conference. And I move that this be admitted into the record.

Mr. FORER. I certainly concede that this is an authentic excerpt from the New York Times for June 9, 1961. I object on the grounds that it is irrelevant, immaterial, and incompetent otherwise.

Mr. PALMER. Your particular attention, Mr. Examiner, is called to the picture that appears also with that.

The HEARING EXAMINER. I think that I will sustain the objection as to the competency and relevancy and materiality of this exhibit here. It seems to me it just constitutes a reporter's own opinion; without anything further, I don't see how I can accept that.

Mr. PALMER. We would like to take exception to that. Mr. Examiner, for the reason——

The HEARING EXAMINER. What is the date of that?

Mr. PALMER. This is the New York Times, Friday, June 9, 1961.

The HEARING EXAMINER. Do you want to mark that "offer of proof"? I will be glad to mark it so that the record will contain that.

Mr. PALMER. Very well. The reason for this, Mr. Examiner, as I stated before, is that Mr. Lissner refused to attend when we requested his attendance here.

The HEARING EXAMINER. Mr. Lissner is a member of the Communist Party, a recognized member, or anything? Who is he?

Mr. PALMER. This was a news conference, and Mr. Lissner was a reporter for the New York Times. He was in attendance at that conference.

The HEARING EXAMINER. We will mark this "Exhibit 16" for identification, offered and rejected.

(Photostatic copy of article from the New York Times, June 9, 1961, marked "State Department Exhibit 16" for identification, offered and rejected, marked "offer of proof.")

Mr. PALMER. We have here an exhibit on two pages, which is an article from the September 24, 1961, issue of the Worker, captioned "Tributes to William Z. Foster: His Deeds Will Never Die." This article contains an address by Elizabeth Gurley Flynn, national chairman of the Communist Party, U.S.A., at the funeral services of Mr. Foster in Moscow, U.S.S.R., and I move, Mr. Chairman, that this be admitted into the record.

Mr. FORER. I concede the authenticity of the document. I object on the grounds of relevancy and materiality.

The HEARING EXAMINER. Excerpt from the Worker, Sunday, September 24, 1961, page 3, and continuation, admitted into evidence on concession of authenticity, and marked "Exhibit 17."

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(Photostatic copy of article from the Worker, Sept. 24, 1961, admitted in evidence and marked "State Department Exhibit 17.")

Mr. PALMER. I have here, Mr. Examiner, an article from the October 1, 1961, issue of the Worker, written by Elizabeth Gurley Flynn, captioned "Farewell to Bill Foster." In this article Mrs. Flynn writes: "I am writing now from that city"—Moscow—"as chairman of the CP-U.S.A." And I move the admission of this article.

Mr. FORER. I concede the authenticity of the excerpt. I object on the grounds of irrelevancy and immateriality.

The HEARING EXAMINER. Excerpt, page 7, of the Worker, Sunday, October 1, 1961, is admitted, on concession of authenticity, and marked "Exhibit 18."

(Photostatic copy of article from the Worker, Oct. 1, 1961, admitted in evidence and marked "State Department Exhibit 18.")

Mr. PALMER. I have here, Mr. Examiner, an article from the October 16, 1961, issue of the New York Times, captioned "U.S. Reds on Moscow TV." This article describes Elizabeth Gurley Flynn as head of the American delegation to the Communist Party congress, Soviet Union, and national chairman of the American Communist Party. And I move its admission into the record.

Mr. FORER. I will concede that this is an authentic excerpt from the New York Times for Monday, October 16, 1961, but I object on the grounds that it is incompetent, irrelevant, and immaterial.

The HEARING EXAMINER. I sustain the objection to the admission into evidence of the excerpt from the New York Times. It is No. 19. Do you want to mark it for offer of proof, Mr. Palmer?

Mr. PALMER. We will withdraw it.

The HEARING EXAMINER. Let me get this straight. Excerpt No. 19 for identification is withdrawn.

Mr. FORER. Off the record a minute.

(Discussion off the record.)

(Copy of article from the New York Times, Oct. 16, 1961, marked "State Department Exhibit 19" for identification, was withdrawn.)

Mr. PALMER. I have here an article from the Worker, issue of October 29, 1961, captioned "People in U.S. Oppose Nuclear War, Soviets Told." This article describes the speech by Mrs. Elizabeth Gurley Flynn, chairman of the Communist Party U.S.A., at the 22d Congress of the Communist Party of the Soviet Union. At one point the article quotes Mrs. Flynn as expressing confidence in the "fulfillment" of the "magnificent plan to build communism in the next two decades." The Congress is a "beacon light to oppressed people the world over," she states. I would like to move that that be admitted into the record.

Mr. FORER. I concede that it is an authentic excerpt, that it is what it purports to be, an excerpt from the Worker of that date, but I object on the grounds of relevancy and materiality.

The HEARING EXAMINER. Excerpt from the Worker, issue of October 29, 1961, admitted into evidence, marked "Exhibit No. 20," on concession of authenticity.

(Copy of article from the Worker, October 29, 1961, admitted in evidence and marked "State Department Exhibit 20.")

Mr. PALMER. I have here, Mr. Chairman, the frontispiece and an article from the October 31, 1961, issue of New Times, captioned "Unanswerable Challenge," and it states that this is written by Elizabeth Gurley Flynn, chairman, National Committee, Communist Party of the United States of America. And I move the admission of this document.

The HEARING EXAMINER. You have seen it, Mr. Forer?

Mr. PALMER. He has seen it.

Mr. FORER. I concede that the excerpt is a true copy of what it purports to be. I object on the grounds of irrelevancy and immateriality.

The HEARING EXAMINER. On your concession of authenticity, that is the concession of this article as written by Mrs. Flynn—other than that I don't know what its authenticity means.

Mr. FORER. Off the record.

The HEARING EXAMINER. All right.

(Discussion off the record.)

The HEARING EXAMINER. The article entitled "Unanswerable Challenge" contained in News Times, October 31, 1961, admitted and marked "Exhibit 21," on concession of authenticity.

(Copy of article, "Unanswerable Challenge," New Times, Oct. 31, 1961, admitted in evidence and marked "Exhibit 21.")

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Mr. PALMER. Mr. Examiner, I wonder if we might at this point have about a 5-minute recess?

The HEARING EXAMINER. I think we will make it a 10-minute recess, if you don't mind. We recess for 10 minutes.

(Whereupon a short recess was taken.)

The HEARING EXAMINER. Proceed, Mr. Palmer.

Mr. PALMER. Mr. Examiner, I have here what purports to be a copy, by the caption, of a picture from the Worker of November 12, 1962, which shows Elizabeth Gurley Flynn, from the Communist Party of the United States, national chairman, at the speakers stand with Nikita Khrushchev at the 22d Congress of the Communist Party of the Soviet Union.

We would like to offer this in evidence.

Mr. FORER. I can't even make out Mr. Khrushchev's picture, let alone Mrs. Flynn's. But it is all right.

I concede that this is an authentic excerpt from the Worker of November 12, 1962. I object on the grounds of irrelevancy and immateriality.

Mr. PALMER. Mr. Examiner, if you feel it is necessary that we get a better copy, I believe we could probably procure a better copy than this. This was done rather hurriedly, and I apologize to the examiner for the picture. The caption is really the thing we are interested in here.

The HEARING EXAMINER. The photostatic copy of page 5 of the Worker, Sunday, November 12, 1962, is admitted on the concession of authenticity and marked "Exhibit 22." However, the picture contained therein fails to reveal any faces which could possibly be identified. Consequently, with respect to the picture it is not accepted.

(Photostatic copy of p. 5 of the Worker, Sunday, Nov. 12, 1962, admitted in evidence and marked as "State Department Exhibit 22.")

Mr. PALMER. We have here, Mr. Examiner, a letter to the New York Times signed by Elizabeth Gurley Flynn, which is prefaced by a note that Mrs. Flynn "is national chairman of the Communist Party of the U.S.A." And this letter appeared in the November 22, 1961, edition of that newspaper. We move that it be admitted for the record.

Mr. FORER. I will concede that this is an authentic excerpt from the New York Times of November 22, 1961. I will also concede that the letter, which appears here over the signature of Elizabeth Gurley Flynn, was written by Mrs. Flynn. However, I object to the admission of the letter on the grounds that it is irrelevant and immaterial; and I object to the admission of the captions above the letter, the one that says: "Party Official Asks Support for Her Defiance of the McCarran Act"; and then: "The writer of the following letter is national chairman of the Communist party of the U.S.A." I object to the admission of those two legends on the grounds that they are incompetent as well as irrelevant and immaterial.

The HEARING EXAMINER. The letter contained in the New York Times, Wednesday, November 22, 1961, purportedly signed by Elizabeth Gurley Flynn, is admitted on the concession of authenticity; and the remainder of the article and exhibit is stricken. Would you want the rest of it marked for any purpose, Mr. Palmer?

Mr. PALMER. No, sir. That's all right. We accede to the ruling of the chair.

(Photostatic copy of letter contained in the New York Times, Wednesday, Nov. 22, 1961, purportedly signed by Elizabeth Gurley Flynn, admitted in evidence and marked as "State Department Exhibit 23.")

Mr. PALMER. We have now, Mr. Examiner, an excerpt from the Worker dated November 28, 1961, which is captioned: "Gurley Flynn's Letter to 'Times' On McCarran Act." This article describes Mrs. Flynn as a Communist leader, and this is the same letter which was introduced in the previous exhibit, No. 23. We move that this be admitted.

Mr. FORER. Well, I concede this is an authentic excerpt from the Worker. I will even concede that that is Mrs. Flynn's picture. I object on grounds of irrelevancy and immateriality.

The HEARING EXAMINER. Mr. Palmer, is this excerpt from the Worker offered as an editorial comment by a Communist organ? Is that what the purpose of the——

Mr. PALMER. The purpose is to show, Mr. Examiner, that this letter, which also appeared in the New York Times—that the New York Times categorized her as a leader of the Communist Party, and this article also categorizes Mrs. Flynn as a Communist leader.

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The HEARING EXAMINER. Since the letter is already in evidence, marked "Exhibit No. 23," I don't see any materiality of this comment and I reject the offer.

Mr. PALMER. We would like to take exception to your ruling in this matter, and ask that that be an offer of proof.

(Photostatic copy of the Worker, dated Nov. 28, 1961, marked as State Department "Exhibit 24" for identification, offered and rejected.)

Mr. PALMER. Now, Mr. Examiner, we have here an article from the November 30, 1961, issue of the Washington Post and Times Herald captioned "Red Refusal To Register Reiterated." This article describes the Communist Party's refusal to register under the provisons of section 7 of the Internal Security Act of 1950, and quotes Claude Lightfoot, once a national vice chairman of the Communist Party U.S.A., as identifying Elizabeth Gurley Flynn as one of the three remaining officers of the Communist Party.

I move that this document be admitted.

Mr. FORER. I object to this as being clear hearsay, and otherwise incompetent, and also irrelevant and immaterial. It is what some newspaper reporter says that somebody named Claude Lightfoot said about Elizabeth Gurley Flynn. It is hearsay on hearsay.

The HEARING EXAMINER. I will sustain the objection.

Mr. PALMER. We would like to take exception to that on the basis that if Mrs. Flynn was here why she could answer this question.

Mr. FORER. I should make it plain that I do not dispute but concede that it is an article from the Washington Post as it purports to be. I don't dispute the authenticity that it is what it purports to be.

Mr. PALMER. It is not the best copy, but it is from the Post.

Mr. FORER. You are not making that an exhibit.

The HEARING EXAMINER. No, an offer of proof.

(Photostatic copy of the Washington Post and Times Herald, dated Nov. 30, 1961, marked as "State Department Exhibit 25" for identification, offered and rejected.)

Mr. PALMER. We have here, Mr. Examiner, an article from the December 5, 1961, issue of the New York Post captioned "Elizabeth Flynn Hints Retirement." The article describes Mrs. Flynn as a "70-year-old Communist." We move that this be admitted.

Mr. FORER. May I get a look at it.

Well, I object. This is the New York Post, December 5, 1961, and I object on grounds that it is incompetent as well as irrelevant and immaterial.

The HEARING EXAMINER. I will accept that portion of the clipping from the New York Post which quotes the words of Elizabeth Gurley Flynn; the rest of exhibit No. 26 is striken.

Mr. FORER. May I get a look at that a moment. I just wanted to get those words.

(Photostatic copy of portion of clipping quoting words of Elizabeth Gurley Flynn from the New York Post, dated Dec. 5, 1961, admitted in evidence and marked as "State Department Exhibit 26.")

The HEARING EXAMINER. Mr. Forer, in connection with these articles that are being submitted, I take it that you are offering no objection that the original is not being submitted?

Mr. FORER. Oh, absolutely not.

The HEARING EXAMINER. And that these are authentic copies?

Mr. FORER. Absolutely not.

Mr. PALMER. Mr. Examiner, if at any time you or Mr. Forer desire to see the original, we would try to obtain them. We have had them.

The HEARING EXAMINER. As far as I am concerned, these are satisfactory as long as there is no objection.

Mr. FORER. It is perfectly satisfactory to me.

Mr. PALMER. We have here, Mr. Examiner, an article from the December 5, 1961, issue of the New York Times captioned "Red Chief Unswayed." This article quotes Mrs. Elizabeth Gurley Flynn as stating that she "would continue to work for the Communist Party in spite of a Federal indictment."

I move that this be admitted.

Mr. FORER. I object on the grounds that it is incompetent as well as irrelevant and immaterial.

The HEARING EXAMINER. Exhibit No. 27 which has just been offered is rejected.

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Mr. PALMER. We would like to take exception to that, Mr. Examiner, on the basis that you previously accepted that part of an exhibit which quoted Mrs. Flynn, and we think that you should accept that part of this exhibit which quoted Mrs. Flynn.

The HEARING EXAMINER. Unfortunately, Mr. Palmer, there is no quote in there. It is editorial comment on what she said.

Mr. PALMER. I would like to offer it for proof.

(Photostatic copy of clipping from the New York Times, dated Dec. 5, 1961, marked as "State Department Exhibit 27" for identification, offered and rejected.)

Mr. PALMER. We have here an article from the Washington Daily News dated February 9, 1962, which reads as follows:

"U.S. aides, eyeing the two trips to Moscow in 1961 by Elizabeth Gurley Flynn, a top U.S. Communist, have ordered an inquiry to see if she can afford to pay more than $10 a month toward a $6,000 fine imposed in 1958."

We move that this be admitted.

Mr. FORER. This is as clear a case as I have ever seen of hearsay and incompetent evidence. I also think it is irrelevant and immaterial. I object.

The HEARING EXAMINER. Notwithstanding Mr. Forer's characterization of the article, I will reject the offer.

Mr. PALMER. May it be offered for proof?

The HEARING EXAMINER. No. It is already in the record.

Mr. PALMER. We would like to note our exception to the ruling.

Mr. Examiner, that concludes the documentary evidence.

We have a witness we would like to call, and it won't take very long. I am sure at least that the direct examination will not take very long. We could finish it up I believe and could get out of here at a reasonable time for lunch. He has to go back to New York, which is the reason I would like to go ahead.

The HEARING EXAMINER. Yes.

Mr. PALMER. I will call James Alan Gash.

Whereupon, JAMES ALAN GASH, having been called and duly sworn as a witness for the Government, was examined and testified as follows:

DIRECT EXAMINATION

The HEARING EXAMINER. Please be seated.

Please state your name and present address and occupation.

A. James Alan Gash, A-l-a-n G-a-s-h, 205 East 63d Street, New York, N.Y.

Question by Mr. PALMER:

Q. And what is your occupation, Mr. Gash?—A. I am a news reporter with station WNEW.

Q. Will you talk right to the examiner. He is the one interested in what you have to say.

The HEARING EXAMINER. And to the shorthand reporter.

A. I am a news reporter for radio station WNEW in New York.

Q. And in what part of New York is WNEW located?—A. It is in Manhattan, New York County.

Q. And from a geographical standpoint what do your duties consist of, and what area do they cover?—A. Well, in general, I would say covering the news in the Metropolitan New York area, which would include parts of Connecticut and New Jersey.

Q. And how long have you been employed as a news reporter by radio station WNEW?—A. Three years and about 4 months.

Q. Now will you tell the examiner whether you were so employed by WNEW on March 19, 1961?—A. Yes, I was.

Q. Do you recall anything about that date?—A. In the early afternoon I covered a press conference at——

Mr. FORER. Just a moment. I object that the answer is obviously being unresponsive, and going beyond the question. The question was "Do you recall anything about that date?"

Mr. PALMER. All right, I will rephrase the question:

Q. Do you recall the date of March 14, 1961?—A. Yes, I do.

Q. Were you, on that date, performing your official professional duties for station WNEW?—A. Yes, I was.

Q. And did anything unusual occur in the line of your professional duties on that particular date that you recall?—A. Yes, I would call it unusual.

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Q. Would you state to the examiner what that unusual happening was?—A. I met Mrs. Flynn for the first time.

Q. Who is Mrs. Flynn?—A. She identified herself on that afternoon as the national chairman of the Communist Party, U.S.A.

Q. Do you know the rest of Mrs. Flynn's name?—A. Elizabeth Gurley Flynn.

Q. And where did this event take place?—A. On the third floor at 23 West 26th Street in New York.

Q. Do you know what that is commonly known as?—A. It is the headquarters of the Daily Worker, a newspaper of the Communist Party, U.S.A., and the Communist Party of New York State.

Mr. FORER. Just a moment. I move to strike the characterization of the Daily Worker on the grounds that the witness is not qualified to be able to give the characterization.

Mr. PALMER. I think he——

The HEARING EXAMINER. Just a moment, let me ask the witness: that characterization, so-called, does that appear on the door of——

A. It appears on the building.

The HEARING EXAMINER. On the building.

A. Yes, it does.

The HEARING EXAMINER. I will accept it.

Mr. PALMER. Thank you, Mr. Examiner.

Q. Now can you state who was being interviewed at this press conference, news conference?—A. Mrs. Flynn. I believe, to the best of my recollection, that Gus Hall was also there. And I believe, although I am not sure, that Benjamin Davis was there.

Q. Had you ever seen Mrs. Flynn before this date?—A. I had not.

Q. How then did you know that this was Mrs. Flynn?—A. She identified herself as such. And before then, the reason, well——

Q. Go ahead.—A. We had been summoned there, to cover a press conference by a person identified as Mrs. Flynn, by the wire services. And I believe, although I am not sure of this, a call from the Communist Party, too, saying that Mrs. Flynn would hold the press conference.

Q. Was this call made to you personally?

Mr. FORER. Just a moment. I move to strike this business about the call. He hasn't shown who called, or that it was Mrs. Flynn who called, or even that he received a call. It seems to me——

The HEARING EXAMINER. I take it Mr. Palmer was going to ask——

Mr. PALMER. I was going to ask in the next question if he personally knew.

The HEARING EXAMINER. Subject to tying it in with personal knowledge.

Mr. FORER. I will reserve the objection.

Questions by Mr. PALMER:

Q. Now were you personally called or summoned?—A. No, I was not. The office received the call.

Q. A telephone call?—A. Yes.

Q. And did you say also that it was on the wire?—A. It was on the United Press wire.

Q. Did you see that?—A. Yes, I did.

Mr. FORER. I move to strike all that testimony about the call and what was put on the wire. What is the evidence of Mrs. Flynn? The call didn't even come there.

The HEARING EXAMINER. Well, I will strike the testimony of the witness with respect to the telephone call, and the effect of the call at this point. However, I think, Mr. Palmer, you may proceed with the method in which Mr. Gash obtained the information. I think that that would be permissible.

Questions by Mr. PALMER:

Q. Tell the examiner how you got this information?

Mr. FORER. Excuse me. I am not clear.

Q. Information as to the meetings; that the meeting was going to occur?—A. The notice appeared on the United Press radio wire that Mrs. Elizabeth Gurley Flynn, the newly named chairman of the Communist Party, would hold a press conference at 23 West 26th Street.

The HEARING EXAMINER. That appeared on the wire service?

A. Yes, sir.

Mr. FORER. Now I have no objection to this going in as evidence of how he heard about it. I would object to it if it is meant to be evidence that Mrs. Flynn was what this wire service said.

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The HEARING EXAMINER. No; I accept your reservation, Mr. Forer. I wasn't intending to accept the characterization of the wire service. I just wanted to find out how Mr. Gash obtained the information of this meeting that he attended.

Mr. FORER. Yes.

Questions by Mr. PALMER:

Q. Now, Mr. Gash, will you tell the examiner in your own words, as best you can recall, what happened at the press conference?

A. Mrs. Flynn—a woman who identified herself as Mrs. Flynn—was sitting in the front of the room. She said that she had called the press conference—had asked us there to discuss her new position as national chairman of the Communist Party.

Now this is one thing I would like to point out: this was over a year ago. I don't have notes on it. So this is the best of my recollection on all of this. She said she had assumed the position a short while before that. As I recall it, she said that Eugene Dennis, who had held the position, had died; she had assumed it.

There were, I would say, approximately 20 reporters in the room. The conference was a very long one; I would say a couple of hours. After the newspaper reporters had asked her questions, I had a personal interview with her, which we recorded on a tape recorder.

Some of the things she said— She said she had been in the Communist Party for 26 years; her chief goal during the following year, the first year in her new position, was to try to do something about what she called "repressive legislation against the Communist Party." She said she was leaving, I believe on the following day, for a 2-month trip to the Pacific coast—Los Angeles and I think the State of Washington. I said, "While you are out there, will you do recruiting?" She said, "I don't make trips on behalf of the party without trying to recruit for the party." She said she is particularly interested in young people; she feels young people have a great interest in what she calls "socialism."

Q. Now these statements were made by Mrs. Flynn at the press conference, or—A. Made at the press conference, and during my interview afterwards.

Q. So your statement just made covers both the interview and the press conference?—A. Yes, sir.

Q. And was the lady that you interviewed after the press conference the same one who identified herself as Mrs. Elizabeth Gurley Flynn?

The HEARING EXAMINER. Of the Communist Party?

A. She was.

The HEARING EXAMINER. What was the date of that meeting again, Mr. Gash?

A. March 14, 1961—I believe in the early afternoon.

Questions by Mr. PALMER:

Q. Now you mentioned, Mr. Gash, that there were two others who took part in the press conference with Mrs. Flynn.—A. I am almost positive that Gus Hall was there. I believe Benjamin Davis was.

Q. Do you know who Gus Hall is?—A. I am not sure of his title. I had met Gus Hall previously when he assumed a position of leadership with the party; the exact title I don't know.

Q. Was he identified at the press conference?—A. He identified himself.

Q. By name only?—A. By name, and by title. I don't remember that title.

Q. What title did he give?—A. I do not remember that.

Q. He identified himself as an officer of the Communist Party of the U.S.A.?—A. That is correct.

Q. Your answer is "yes"?—A. Yes.

Mr. PALMER. I believe that is all the questions we have, Mr. Examiner.

The HEARING EXAMINER. Mr. Forer.

CROSS-EXAMINATION

Questions by Mr. FORER:

Q. What is the characterization that appears on the building at 23 West 26th Street, what does it say?—A. The Worker.

Q. I move that the characterization that he gave in his direct testimony be striken, when he characterized the Worker as a newspaper of the Communist Party. You allowed it in because he testified that the characterization appeared on the outside of the building. It now appears that what appears on the outside of the building is the name of the paper, but not the characterization.

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The HEARING EXAMINER. I just want to clarify that in my own mind as well. Now you testified that that was not a characterization, but that it appeared on the outside of the building.

A. I don't believe I said a "Communist newspaper." I believe I said "a newspaper"—I am not sure.

The HEARING EXAMINER. Well, I would strike the characterization of the Worker, I believe, that you gave with respect to it being a "Communist" newspaper—I have forgotten your exact words. But I think, Mr. Palmer, you might on redirect bring that out, if there is such a——

Mr. PALMER. All we were trying to establish here was where the press conference was being held. And you have before you evidence that the Worker and the Communist Party headquarters are in the same building, on the same floor.

The HEARING EXAMINER. Well, the testimony that we have will remain in, except that Mr. Gash's statement I believe would be his own opinion rather than what appeared on the outside of the building.

Mr. PALMER. I believe he stated a number, and he didn't characterize it.

The HEARING EXAMINER. Well, I don't believe it will be necessary to, although maybe it would be.

Mr. FORER. Can we leave it this way: I thought I heard him say a "Communist newspaper" or words to that effect. Now I have absolutely no objection to the characterization of it as a newspaper. I don't think that he is qualified to describe it as a "Communist" newspaper—that's all. Now let's leave it that if he called it something other than "a newspaper"; if he called it a "Communist newspaper," or a "Communist organ" or something like that—I suggest that if he so called it that that be striken.

Mr. PALMER. Mr. Examiner, we are perfectly willing to leave it up to you to determine whether he said it was a "Communist newspaper" or just "a newspaper."

The HEARING EXAMINER. All right, under that, with those concessions, I will take it for what it is worth as to what he said.

Mr. FORER. All right.

Questions by Mr. FORER:

Q. Now, Mr. Gash, you said this was an unusual experience for you on March 14, 1961; and then, later, you said that you had interviewed—I believe you said you had interviewed Mr. Gus Hall before.

A. That's right.

The HEARING EXAMINER. Excuse me, Mr. Gash. Keep your voice up so the reporter can hear you.

A. Yes, certainly. Excuse me.

Questions by Mr. FORER:

Q. It is also true that as a newspaper reporter you are constantly interviewing people—isn't that right?—A. That's right.

Q. What was so unusual about this that you remember it so well?—A. I met Mrs. Flynn for the first time. She made, I would say, quite an impression on me.

Q. Well, you are constantly meeting people for the first time?—A. Yes, sir.

Q. But it was her personality that made the impression on you—that made it unusual?—A. Yes, sir.

Q. You didn't write down, or take notes of this, did you?—A. Yes, I did.

Q. You did. What happened to the notes?—A. I haven't the vaguest idea.

Q. You don't have them any more?—A. No, sir, I don't.

Q. Why did you take the notes? What did you use the notes for at a later time?—A. The notes were used on that day to do a report, write a story for the station, and do a report on the press conference.

Q. Also, for the station?—A. Yes, sir.

Q. Now how did you come to pass this information on to the U.S. Government, Mr. Gash?

Mr. PALMER. We would like to object to this as going beyond the scope of the direct examination. On direct examination he testified that he read this notice, he went to this meeting, and I believe that this was utilized, as he stated, in the news release. And I believe this question is going beyond the scope and realm of the cross examination.

Mr. FORER. Any proceeding I have ever seen, it has always been considered legitimate cross-examination to ask a witness how he came to become a witness for the other side. It shows a bias and interest.

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The HEARING EXAMINER. I will accept the cross examination for that purpose: to attack possibly the credibility of the witness.

You may proceed, Mr. Forer.

Mr. FORER. Do you know the question, Mr. Gash, or do you want it restated?

A. I would like it restated.

Mr. FORER. Would the reporter read the question back?

(The reporter read the question back, as follows: "Q. Now how did you come to pass this information on to the U.S. Government, Mr. Gash?")

A. I was questioned by the Federal Bureau of Investigation.

Questions by Mr. FORER:

Q. When?—A. I would say approximately 3 months ago.

Q. Did they at that time tell you that they were interested in this in order to have you testify in a passport hearing involving Mrs. Flynn?

Mr. PALMER. Don't answer that. We are going to object to this line of questioning. It has nothing to do with what was brought out on direct examination, and we think it is going beyond the scope of valid cross examination, as to what they said to him or what they implied.

The HEARING EXAMINER. Well, Mr. Palmer, I believe that in cross-examination any matter that tends to attack the credibility of the witness is admissible and——

Mr. PALMER. Well, what the FBI said to him——

The HEARING EXAMINER. Well, it may be relevant it seems to me on the motives of the witness in testifying.

Mr. PALMER. Note our exception.

The HEARING EXAMINER. The answer is? What was the answer?

A. No.

Questions by Mr. FORER:

Q. Let me ask you this. You spoke to the FBI or you were questioned by the FBI about this 3 months ago. Now, following that, were you again interviewed by the FBI, or any other Government agency regarding this occurrence on March 14, 1961?

A. I was not.

Q. When did you first know that your testimony was desired in this hearing?—A. I would say approximately—I don't know the exact date—about 10 days ago I received a letter asking that I appear as a witness.

Q. I see.

Now do you generally report on news matters to the FBI, Mr. Gash, or was this an unusal event—their questioning you about this?

A. It was an unusual event.

Q. In other words, you are not a regular source of information for the FBI, is that correct?—A. No, sir.

Q. Have you met Mrs. Flynn at some later time since March 14, 1961?—A. Yes, sir.

Q. In what connection?—A. As a reporter.

Q. When?—A. I have seen her at party headquarters at 23 West 26th Street when I have covered stories there.

Q. I see. But you don't remember when?—A. No, sir.

Q. Was it later than March 14, 1961?—A. Yes, sir.

Q. Did you interview her at that time, or just say "hello" or what?—A. I think it was just a matter of saying "hello." I believe Mr. Hall held a press conference at that time.

Q. I see.

Mr. FORER. I have no further questions.

The HEARING EXAMINER. Mr. Palmer?

Mr. PALMER. We will ask the witness to stand aside. And, Mr. Examiner, if you have no further need for him, and Mr. Forer has no further need for him, why he would like to go back to New York.

The HEARING EXAMINER. Mr. Forer?

Mr. FORER. No.

The HEARING EXAMINER.—The witness is excused.

Thank you very much, Mr. Gash.

Mr. GASH. Thank you.

(The witnessed was excused.)

Mr. PALMER. Mr. Examiner, off the record, I wonder if we might confer with Mr. Forer just a moment or two.

(Discussion off the record.)

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Mr. PALMER. Mr. Examiner, may we go back on the record now. Mr. Examiner, some information has come to our attention which leads us to believe that some of the witnesses we had requested to be here may be available, and we would like to ask that this hearing be continued for, say, 2 weeks.

The HEARING EXAMINER. Let's see. And this may be off the record.

(Discussion off the record.)

The HEARING EXAMINER. If you want to make it May 4, that is about 10 days.

Mr. FORER. May 4. I guess it is all right. Let me just ask this: If it should turn out that the witnesses, in fact, aren't going to appear, or that you decide you don't want them, can we avoid coming back here unnecessarily?

The HEARING EXAMINER. I would certainly appreciate that, Mr. Palmer. It would be necessary, I think, to notify Mr. Forer if the witnesses aren't.

Mr. FORER. If you decide, in other words, that you don't want to put on any more, let's not bother to come back. Because I am willing to state now that if there are no more witnesses on the part of the Passport Office, I have no intention of introducing any evidence.

Mr. PALMER. We would like to present these witnesses, and we believe we will have them. However, death and all that sort of thing. We had one get sick on us this morning.

The HEARING EXAMINER. Or May 3? May 4 would be the last day.

Mr. PALMER. Make it the third.

The HEARING EXAMINER. How about you, Mr. Forer? Would the third be all right? What time do you want to make it? At 10 o'clock?

Mr. FORER. It is OK with me. In this room, I assume. Do you know the room number?

Mr. PALMER. Room 2134.

The HEARING EXAMINER. Is that set now?

The hearing is adjourned to May 3, 1962, at 10 a.m., in room 2134, New State Department Building.

(Whereupon, at 12:10 p.m., the hearing was adjourned, to be continued in room 2134, 10 a.m., May 3, 1962.)

TRANSCRIPT OF PROCEEDINGS

(Informal Passport Hearing)

IN THE MATTER OF ELIZABETH GURLEY FLYNN—TESTIMONY OF JOSEPH B. ZOLTON

DEPARTMENT OF STATE,
May 3, 1962.

Hearing in the above-entitled matter was convened at 10 a.m., Mr. Max Kane, Federal Power Commission, presiding as hearing examiner.

Appearances:

For Mrs. Flynn: Mr. Joseph Forer, 711 Fourteenth Street NW., Washington, D.C.

For the Department of State: Mr. Louis A. Palmer, and Mr. Carroll H. Seeley, Jr.

Reported By: V. R. Voce.

PROCEEDINGS

The HEARING EXAMINER. The hearing will please come to order. This hearing is a continuation of the hearing previously held on April 24 and adjourned to May 3rd.

Mr. Palmer, I believe you were going to proceed.

Mr. PALMER. Yes, sir.

The HEARING EXAMINER. Will you call your first witness.

Mr. PALMER. Mr. Examiner, it is with regret that I announce this morning that Mr. James F. Brooks cannot be present at the hearing this morning because of a death in his family. I will note that for the record.

The HEARING EXAMINER. It is so noted.

Mr. PALMER. We would like at this time to call Joseph B. Zolton.

Whereupon, JOSEPH B. ZOLTON, having been called and duly sworn as a witness, was examined and testified as follows:

The HEARING EXAMINER. Please state your name and address for the record.

A. Joseph B. Zolton. My address is 71-28 58th Road, Nesbeth, N.Y.

Mr. FORER. What was that city?

A. Nesbeth, N-e-s-b-e-t-h.

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DIRECT EXAMINATION

Questions by Mr. PALMER:

Q. Mr. Zolton, what's your occupation?—A. I am working at the headquarters of the United Presbyterian Church. I am a cashier.

Q. You are a cashier?—A. Yes, sir.

Q. At the Presbyterian Church headquarters?—A. Yes, sir.

Q. And where is that located?—A. At 475 Riverside Drive, New York. The name of the building is Intra-Church Center.

Q. And how long have you been employed there, Mr. Zolton?—A. Since more than 3 years.

Q. Mr. Zolton, did you attend a meeting at the Polonia Club in New York City on January 5, 1962?—A. I did.

Q. Will you tell the examiner what took place at that meeting?—A. It was at the Polonia Club, 210 Second Avenue.

The HEARING EXAMINER. How do you spell that club?

A. P-o-l-o-n-i-a.

Q. Just tell the examiner what took place there.

A. The main speaker was Mrs. Elizabeth Gurley Flynn. She was introduced by a man, his first name was Bill. I don't know his last name, but he was called Bill by the others. He introduced Mrs. Flynn as the first lady of the American labor (sic), who was one of the delegates of the U.S. Communist Party at the 22d congress at Moscow.

Miss Flynn told about the circumstances, how she got to the congress. She said that she represented the Communist Party of the U.S.A. At the bedside of the Comrade William Z. Foster she was told there to attend the 22d Congress in Moscow. She said that she didn't dare to take a chance coming home to the United States because there was a chance that her passport would be revoked as a Communist. So she stayed in Moscow and attended the 22d congress that took place a few weeks later. She was at William Foster's bedside.

She spoke quite lengthily about the average Soviet citizen's life. She spoke how necessary it was that the Soviet Union started again nuclear testings, and later she answered certain questions that were made among the audience. For instance, one question was asking why the Soviet Union had to start nuclear testing again. Miss Flynn said that it wasn't a political——

Mr. FORER. Just a moment. I object to this. It is irrelevant.

The HEARING EXAMINER. I sustain the objection as to the questions regarding the testing, Mr. Palmer.

Mr. PALMER. What is it the Chair wishes to hear?

The HEARING EXAMINER. Well, the issues in this case, as I see them, are with regard to Mrs. Flynn's membership in the Communist Party, and I do not believe that it is necessary or even material to introduce evidence concerning philosophies of the Communist Party or anything else, or their beliefs in connection with what the Soviet Union is doing. I will sustain the objection.

Mr. PALMER. Yes, sir. We will attempt to keep the witness's testimony along those lines.

By Mr. PALMER:

Q. Mr. Zolton, I hand you here exhibit No. 1, the original thereof, and ask you to examine the photograph that is attached thereto. [Handing exhibit No. 1 to the witness.]

A. It is Mrs. Elizabeth Gurley Flynn.

Q. That is Mrs. Elizabeth Gurley Flynn?—A. Yes, sir.

Q. And is this the lady that you indicated spoke at the Polonia Club on January 5, 1962?—A. Yes, sir. She was the speaker.

Q. You spoke of the 22d congress. Was there any explanation given as to what the 22d congress in Moscow was, Mr. Zolton?—A. Well, I thought that this was the congress of the Communist countries.

Q. Of the Communist countries?—A. Yes, sir. This man named Bill, by the introduction, mentioned that Mrs. Flynn was one of the delegates of the Communist Party of the United States.

Q. You do not know who Bill is?—A. No, sir. I do not know. He was presiding. That is all I know about him. His name was Bill.

Q. In relation to the hall, where did Mrs. Flynn speak from?—A. The room looked like this table. At the end [indicating] of the room, the small part of it,

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there was a table and there were four or five chairs. Mrs. Flynn was sitting at the middle. There were a few other persons. I do not know them.

Q. There were others sitting at the table?—A. Yes, sir.

Q. Apparently how many, if you remember?—A. About four or five.

Q. You knew none of them?—A. No, sir, I didn't.

Q. Approximately how many people were in the hall, if you recall?—A. About a hundred fifty. I'm not sure. It's a small room and it was completely crowded. It was over a hundred, I'm sure.

The HEARING EXAMINER. Mr. Zolton, did any of the other people at that table speak that evening?

A. I beg your pardon?

The HEARING EXAMINER. Did any of the other people—you said there were four or five, I believe——

A. Yes, sir.

The HEARING EXAMINER. Surrounding Mrs. Flynn at the table. Did any of the others speak at that meeting?

A. No, sir, only this man who was called Bill. He spoke by the introduction, and later when a collection was taken, this Bill was in charge of it. He spoke a few words when they took the collection.

The HEARING EXAMINER. Did he indicate what the collection was for?

A. They usually do not explain it, why the collection was taken.

Mr. FORER. I move that be stricken as not responsive to the question.

The HEARING EXAMINER. Will you read the question and answer, please?

Mr. FORER. That is not an intelligent answer. He answered, "They usually do not."

The HEARING EXAMINER. Could you answer the question either "Yes" or "No," if you can? Will you read the question, please?

(The reporter read back the question and answer, as follows: "Q. Did he indicate what the collection was for?—A. They usually do not explain it, why the collection was taken.")

The HEARING EXAMINER. Will you answer "Yes" or "No."

A. He didn't.

Mr. PALMER. We have no further questions on direct.

The HEARING EXAMINER. Mr. Forer?

CROSS-EXAMINATION

By Mr. FORER:

Q. Mr. Zolton, isn't it a fact that this 22d congress was described as a congress of the Communist Party of the Soviet Union?—A. I'm not an expert. I don't know. I don't know whether it was explained that it was the Soviet Union Congress or the Communist Party Congress.

Q. Well, I'm not asking you to testify of your own knowledge as an expert. I'm asking you what was explained there. You testified on direct examination that the 22d congress, which you said Mrs. Flynn said she attended, was described as a convention of the Communist countries. And I'm asking you, isn't it a fact that the description given to the 22d congress at this meeting was that it was the 22d Congress of the Communist Party of the Soviet Union?—A. I don't remember the exact words, sir.

Q. So it could have been so described rather than described as a congress of the Communist countries? You just don't remember?—A. It could be.

Q. Yes. And isn't it also a fact that Mrs. Flynn was described as going there not as a delegate but as an observer on behalf of the Communist Party of the United States?—A. It is possible, sir. I remember exactly how she was introduced as one of the delegates of the Communist Party of the U.S.A.

The HEARING EXAMINER. One of the delegates?

A. Yes, sir.

Q. Did they say "fraternal delegates"? Or did they qualitfy the word "delegates" in the any other way?—A. This was the introduction, sir, that——

Q. Answer my question, please. Did they qualify the word "delegates"?—A. I don't understand clearly your question, sir.

Q. Well, I'll start it this way—did they say she was a fraternal delegate?—A. No.

Q. Did they say she was any particular kind of a delegate?—A. No. They only said that she was one of the delegates of the Communist Party.

Q. Now, did she herself later refer to herself as a delegate?—A. Yes, sir.

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Q. Now, on direct examination you testified that she said she represented the Communist Party of the United States, I believe.—A. At William Foster's bedside.

Q. And that she stayed on for the 22d Congress, which came a few weeks later.—A. Yes.

Q. You didn't say that she described herself as a delegate?—A. Well, I do now.

Q. You do now?—A. Yes, sir.

Q. She described herself as a delegate?—A. Yes, sir.

Q. Was this meeting open to the public?—A. Yes.

Q. How did you come to attend it?—A. I was asked by the Federal Bureau of Investigation to attend it.

Q. Did they tell you why?—A. No. No particular explanation was given.

Q. Are you a U.S. citizen?—A. No.

Q. What country are you a native or citizen of?—A. Hungary.

Q. When did you come to this country?—A. Four and a half years ago.

Q. Are you here legally or illegally?—A. Legally.

Q. Have you been admitted for permanent residence?—A. Yes.

Q. Or under some other status?—A. Permanent residence.

Q. How long have you been attening meetings for the FBI?—A. Since 1960.

Q. And do they tell you what meetings to go to, or do you pick out the meeting?—A. Once I picked it out and once in a while they tell me what to go to.

Q. And what about this meeting, did they tell you to go to it or did you pick it?—A. They told me.

Q. Did they tell you what they wanted you to observe?—A. No.

Q. Now, after you go to these meetings, do you issue reports to the FBI?—A. Yes, I do.

Q. Does the FBI pay you for your services?—A. They do.

Q. How much?—A. I don't know whether I have to give information about the FBI's financial matters.

Q. Well, there happens to be a court of appeals decision on the subject.

Mr. PALMER. Mr. Chairman, are we drifting afar here?

The HEARING EXAMINER. Is there an objection to the question?

Mr. PALMER. We object, Mr. Chairman, to this particular question on the basis that it's going beyond the realm of cross-examination. There has been no predicate laid here for this particular type of question.

Mr. FORER. Do you wish to hear me?

The HEARING EXAMINER. Yes, I do.

Mr. FORER. First of all, it goes to the credibility. Secondly, in one of the numerous decisions by our court of appeals here on *Communist Party* v. *The Subversive Activities Control Board*, in one of the intermediate decisions which sent the case back to the Board, one of the issues was regarding the failure of the Government to supply information as to the amount paid by the Federal Bureau of Investigation to an undercover agent for the FBI, like this gentleman here, by the name of Mary Markward. And one of the grounds on which the case was sent back to the Board was to require the Government to produce the actual accurate records of the monies paid Mrs. Markward.

May I also say that in one of the New York Smith Act trials, also by coincidence involving Mary Markward, on demand of the defense and on instructions of the court, the Government was required to produce Government records of the FBI compensation payments. Now, it seems to me it is clear that when this witness is appearing as a witness for an agency of the Government, the compensation that the witness receives from the Government relates to the witness's bias.

Mr. PALMER. Mr. Chairman, I don't think that it has been established here that the witness is appearing as a witness for the Federal Bureau of Investigation.

Mr. FORER. No, no.

Mr. PALMER. If this is the contention, I cannot see whether the Federal Bureau of Investigation paid him money to attend meetings—perhaps if it were to this one particular meeting, perhaps so, I don't know whether personally——

The HEARING EXAMINER. Well, Mr. Palmer, Mr. Forer has indicated that there are these rulings of the courts with respect to divulging this type of information by witnesses.

Mr. PALMER. The only objection we are making, Mr. Examiner, is that he keep it to the direct testimony. He has only testified as to this one meeting. He didn't ask him if he was paid for this one meeting or not. He asked him if he

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was paid for all meetings he had attended, and I say this is straying beyond his realm in cross-examination. That is my only argument.

Mr. FORER. I think it goes to biases.

Mr. PALMER. I take no exception to his cases.

The HEARING EXAMINER. You take no exception to these cases. That is the point I was trying to get at, Mr. Palmer. I don't want to recess and take a brief on this if I can possibly help it.

Mr. PALMER. Well, what we——

The HEARING EXAMINER. If you agree with Mr. Forer's interpretation of what the cases say about the divulging of this type of information, I am going to let it in.

Mr. PALMER. No, I don't agree with what Mr. Forer says, and I didn't take my exception on the basis of that, or state my exception on the basis of that. If you——

The HEARING EXAMINER. If your exception——

Mr. PALMER. We are ready for you to rule on the question here.

The HEARING EXAMINER. Conceding the——

Mr. PALMER. But my objection here is that he has gone beyond the realm of the scope of his cross-examination. Now, this is the question we are asking you to rule on at this time, sir. Now, if you want an argument on the law——

The HEARING EXAMINER. I will overrule the objection on that point because I believe that any questions that go to the credibility of the witness are permissible in cross-examination.

Mr. PALMER. Well, we would like for the record to note that we take exception to the ruling of the Chair in this matter.

The HEARING EXAMINER. You may have your exception.

Mr. FORER. As a matter of information, I have been going on the assumption that the procedure here is like in the Federal district courts, you don't have to note an exception to preserve your records.

Mr. PALMER. I am not sure what the procedure is, but I object to Mr. Forer here interjecting his philosophies into the arguments.

Mr. FORER. Well, now, I object to this, and I ask that be stricken. The reason I raised this subject is so I would know what I have to do to preserve my rights under the record. I don't know what that has to do with philosophies. I raised the question whether or not you have to except to preserve your objections, and I think that is the most discourteous and irrelevant and impertinent observation you can make! I ask that it be stricken.

The HEARING EXAMINER. Gentlemen! Strike that. I will grant the application to strike it. Mr. Palmer, I believe that the question had no impertinence involved. I believe that, concerning exceptions, the taking of exceptions, I believe that the record would speak for itself on the objection and the overruling of objections. Now, would you read the last question, please?

(The Reporter read back the questions and answers as follows:

("Q. Does the FBI pay you for your service?—A. They do.

("Q. How much?—A. I don't know whether I have to give information about the FBI's financial matters.")

The HEARING EXAMINER. Off the record.

(Discussion off the record.)

The HEARING EXAMINER. I will rule on the question that exceptions need not be noted, that it is assumed that exceptions to the ruling are taken.

Mr. Palmer, I take it your objection was just limited to the scope of cross examination.

Mr. PALMER. Yes, sir.

The HEARING EXAMINER. And on that basis, I overrule the objection and direct the witness to answer.

A. I was paid occasionally. The first time I got $8 for attending a meeting. Later, and now too, I'm getting $10 for a meeting.

Mr. FORER. I'm sorry. His voice dropped. May I have the answer read back?

The HEARING EXAMINER. Will you read back the last answer.

(The reporter read back the answer as follows: "A. I was paid occasionally. The first time I got $8 for attending a meeting. Later, and now too, I'm getting $10 for a meeting.")

By FORER:

Q. Are you paid for any other services that you render the FBI, if any?

Mr. PALMER. Well, now, again, Mr. Examiner, we are going to object to this question.

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The HEARING EXAMINER. I will sustain the objection, Mr. Forer.

Q. Do your employers, the United Presbyterian Church, know that you have this other function of reporting to the FBI?—A. They have never asked, and I didn't report it.

Q. Now, when you attended this meeting at the Polonia Club, did you make a report on that to the FBI?—A. I did.

Q. And did you state in that report accurately what happened?—A. I did.

Q. And did you say who was present at that meeting?—A. I did.

Q. Do you have a copy of that report?—A. No, I never have a copy.

Q. I ask that the Passport Office produce the report.

The HEARING EXAMINER. Is the Government prepared to produce the report?

Mr. PALMER. We think this is not pertinent to this examination. We think that this only goes to criminal matters. This is not a criminal matter.

Mr. FORER. May I be heard on that? There are some decisions on that if you wish to hear them.

The HEARING EXAMINER. Well, Mr. Palmer, I'm going to have to reserve decision on that because that is a question I think that I will require a brief on. My own impression offhand, which I am not going to be bound by, is that the Government, if I recall correctly, in cases was required to produce reports.

Mr. PALMER. Mr. Kane, we don't want to hold anything back. We are here to present the entire thing.

The HEARING EXAMINER. I understand.

Mr. PALMER. I believe I could produce this report if you think it would be helpful.

The HEARING EXAMINER. Well, it's not a question of being helpful. Mr. Forer has demanded that it be produced, and, as I say, it's my recollection that the cases have held that they are to be produced. Now, I'm not even ruling on that, and I think I would require a brief on the subject.

Mr. Forer.

Mr. FORER. I can give you the law on that very briefly, and the rules.

The HEARING EXAMINER. Just a moment. If he gives us the rulings then, if it's to the best of your information that those are correct, Mr. Palmer, then——

Mr. FORER. I can give you the law and you can then check in a minute.

Mr. PALMER. Mr. Chairman, I'd like to say at this point we are not going to produce this document until you tell us to.

The HEARING EXAMINER. I understand.

Mr. FORER. I understand. I will tell you why I think a brief is unnecessary. Because there is a flat ruling on the subject in this circuit. There is also in the case of *The Communist Party* v. *The Subversive Activities Control Board*, in which in their next to the last decision in the *Communist Party* case, I can get the citation by calling my office, the court ruled that the Jenks statute, which is in terms applicable only to criminal cases, would be applied to an administrative proceeding to require the production of reports by the witness which would be producible under the Jenks statute in a criminal case.

May I also say that since then the Subversive Activities Control Board has repeatedly furnished FBI reports on the man where the witness made a report to the FBI.

I may also say that the National Labor Relations Board issued a formal ruling several years ago, or maybe it wasn't several, soon after the Jenks decision. Their initial practice was, at the National Labor Relations Board, to refuse to produce the witness's reports, but then they issued a formal ruling saying that the reports would be issued. That ruling happened to precede the decision of the court of appeals in the *Communist Party* case.

May I also say the Immigration and Naturalization Service, which is also a civil proceeding, produces the witness's reports.

The HEARING EXAMINER. I have no reason to dispute what Mr. Forer is saying. However, I believe that before I make a ruling on such a thing, I will require briefs on this subject.

Mr. FORER. Let me ask you one question. Can we recess for 5 minutes? I will call the office, give you the citation and you can check the case right now.

The HEARING EXAMINER. Is that agreeable with you, Mr. Palmer?

(Mr. Palmer nodding his head.)

The HEARING EXAMINER. We will take a 15-minute recess at this point.

Mr. FORER. Okay.

(Whereupon, at 10:30 a.m. the hearing was recessed and reconvened at 10:53 a.m.)

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The HEARING EXAMINER. Let us go back on the record.

Mr. Palmer, is it your opinion that, notwithstanding the decision of the U.S. Court of Appeals for the District of Columbia Circuit in the case of *The Communist Party of the United States of America, Petitioner*, v. *The Subversive Activities Control Board, Respondent*, appearing at 254 F. 2d 314, decided January 9, 1958, to the effect that in cross-examination counsel for the respondent in this case is not entitled to the written report made by this witness to the FBI concerning the events which he is testifying about today.

Mr. PALMER. Our position is that the law applies to criminal proceedings and it may in some instances apply to administrative proceedings, but this particular administrative proceeding it does not apply to.

The HEARING EXAMINER. Is the Government claiming a privilege in this case?

Mr. PALMER. I don't think so.

The HEARING EXAMINER. I will overrule the objection and direct the counsel for the State Department to produce the record.

(Mr. Palmer handing the above-mentioned report to Mr. Forer.)

The HEARING EXAMINER. Will the record show that the record was produced by Mr. Palmer and given to Mr. Forer.

By Mr. FORER:

Q. Mr. Zolton, when you made the report to the FBI, did you try to include in there everything that you thought would be important to the FBI?— A. I do.

Q. You testified here that a man—strike that. After you submitted this report to the FBI, did you ever see it again?—A. No.

Q. By the way, how do you spell your first name?—A. Joseph.

Q. Yes, but how do you spell it—G-o-z-s-e-f?—A. This is the Hungarian spelling of my name, G-o-z-s-e-f. That would be the Hungarian spelling.

Q. Yes, I assume that. I assume that your recollection at the time—well, let me show you this report. That is your report, isn't it? [Handing the above-mentioned report to the witness.]—A. This is the FBI agent's report about my report.

Q. Well, did you report to the FBI orally, or in writing?—A. Both.

Q. On this meeing, I'm talking about.—A. Both. At first I told the most important things by phone, right after the meeting, and later I wrote a report about it.

Q. And what is this based on?—A. It is based on my report. I don't know——

Q. On your telephone report, or on the other?—A. I don't know.

Q. All right. Now, first of all, now that you look at this, do you see that this states that "Zolton states that Flynn had attended the 22d Communist Party Congress in Moscow, Russia." Do you see that? [Indicating on report.] "Flynn had attended the 22d Communist Party Congress in Moscow, Russia."—A. Yes

Q. Now, does that refresh your recollection of the question you couldn't answer before, that the 22d congress was described at the meeting as a Congress of the Communist Party of the Soviet Union?—A. No, it doesn't.

Q. It doesn't?—A. No.

Q. But it doesn't say here that she attended the 22d congress of Communist countries, which is what you testified to on direct examination.—A. Well, I don't know what the difference is between the two.

Q. I'm not asking you for the difference. I'm asking you, it doesn't say there that she attended the 22d Communist countries, does it?—A. It says that she had attended the 22d Communist Party Congress in Moscow.

Q. Now, do I understand you don't know the difference between a congress of the Communist Party of the Soviet Union and a congress of Communist countries? Can you answer that "Yes" or "No"?—A. No.

Q. No, you do not know the difference?—A. I don't.

Q. All right. Now, you testified here that Mrs. Flynn said that she had represented the Communist Party of the United States of America at the bedside of comrade William Z. Foster?—A. Yes.

Q. Did you report that to the FBI?—A. I did.

Q. Is it there? [Indicating the statement.]—A. No, it isn't.

Q. You said that Mrs. Flynn said that she did not dare return between the funeral of Mr. Foster and the 22d congress a few weeks later because she was afraid her passport might be lifted.—A. Yes.

Q. Did you report that to the FBI?—A. I did.

Q. Is it there? [Indicating the statement.]—A. No, it isn't.

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Q. I demand that the Passport Office produce the witness's written report to the FBI, which it has not produced.

Mr. PALMER. We are again going to object to this on the same basis that was stated before. And we would like to add at this time, I believe that the examiner has before him a copy of the Federal Register for Friday, January 12, 1962, and I believe we presented a reprint therefrom. We would like to ask at this time that you take judicial notice of title 22, chapter I, that part 51 on passports, and note that in 51.138 it says, "Mrs. Flynn is entitled to be informed of the evidence upon which the Passport Office relied as a basis for the tentative denial."

Now, here what we have produced is what we relied on. We had no knowledge and have no knowledge, other than what this man states, as to any other memorandums which might be in existence.

The HEARING EXAMINER. Mr. Palmer, as I read this 51.138 I note that in the last part of subsection (a) that Mrs. Flynn, in this particular proceeding, is entitled to "confront and cross-examine adverse witnesses." Is it your position that this is not cross-examination of this witness, if it is conceded that he has the right to the report that this witness gave?

Mr. PALMER. The Chair directed us to produce the statement that we had. We produced that statement. We know of no other statement. However, if the Chair again directs us to produce a statement, we will make diligent effort to find some further statement.

Mr. FORER. The witness has——

The HEARING EXAMINER. I believe that the decision that we referred to before speaks of the report, "made a written report to the Government concerning that event, that the Government upon demand must produce the report made by the witness." I believe that, in accordance with that opinion, the report of this witness should be produced.

Mr. PALMER. Well, we would like a reasonable time to produce it.

Mr. FORER. Well, naturally.

The HEARING EXAMINER. Mr. Forer?

Mr. FORER. I say naturally. But I'd like to go ahead with a few more other things on the examination now.

Mr. PALMER. Oh, no. We object to this now. If he is hampered in his cross-examination why we say this, that he is not hampered by the lack of this information. We say that we don't think it applies here, but if he is hampered we would like a reasonable time to try to produce some such statement.

The HEARING EXAMINER. Mr. Forer?

Mr. FORER. I agreed to that.

Mr. PALMER. I don't know that any such statement is available. We have not seen it.

Mr. FORER. I agree that of course you should be given reasonable time to produce it. The only suggestion I make is, instead of stopping, let me ask him a couple more questions while he is here.

Mr. PALMER. No. Because the purpose of the thing is to give him ample opportunity to cross-examine.

Mr. FORER. Well, there are a couple questions I feel I can cross-examine on without that piece of paper.

The HEARING EXAMINER. Do you suggest now that we adjourn, pending the obtaining of the report, Mr. Palmer?

Mr. PALMER. If the Chair is directing us to obtain a report.

The HEARING EXAMINER. Well, I'm directing the report to be obtained if there is such a report.

Mr. PALMER. We would think it would be inappropriate to continue with the cross-examination until that has been obtained.

Mr. FORER. Well, Mr. Examiner——

The HEARING EXAMINER. Let me say this, Mr. Palmer, in the event there is no such report——

Mr. FORER. Why do we have to come back?

Mr. PALMER. I believe the law says you can declare a mistrial. I think there is something else in there. I don't have it with me. This is a facetious remark.

Mr. FORER. Mr. Chairman, I would like to be heard on this. Really, there is no sense being petulant about this. They have been directed to produce a report and, of course, I think they should have had it here. But if they don't have it here, of course, I'm perfectly agreeable to a reasonable time to produce it.

Now, the witness has testified he made the report. That doesn't mean the report is there. Maybe the FBI threw it away. Now, it makes absolutely no

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sense that, if the report is not in existence, for us to come back for me to ask him two or three questions which I can ask him now. Now, the fact that I want that report for the benefit of my cross-examination doesn't mean I can't ask him two or three questions without the report.

The HEARING EXAMINER. I think you may continue with this witness, Mr. Forer.

Mr. FORER. All right.

By Mr. FORER:

Q. Mr. Zolton, you testified on direct that your address was somewhere in Nesbeth, which I believe is Long Island, is that correct?—A. Yes.

Q. What's this address given for you here, 9–27 College Place, College Point, Queens, N.Y.?—A. The 1st of February we moved.

Q. I see. Now, it appears from the face of this that the material in this report was obtained on January 8, 1962, at 475 Riverside Drive, New York, N.Y., by Special Agent Robert C. Burns. Now, was that on January 8? Now, 475 Riverside Drive is where you work, isn't it?—A. Yes.

Q. So Special Agent Burns interviewed you at 475 Riverside Drive?—A. Yes. During my lunch hour once in a while we meet there.

Q. But, Mr. Zolton, you had told me that you had reported on this meeting in two ways.—A. Yes.

Q. By telephone and by letter.—A. Yes.

Q. You didn't tell me that you had reported on this meeting in person at 475 Riverside Drive.—A. I never send them a letter if they got my written report. They took it personally.

Q. You say if they got your written report they took it personally. Let's talk about your written report on this meeting.—A. I gave it to him personally.

Q. You gave it to Mr. Burns?—A. Yes, Mr. Burns.

Q. On January 8, 1962?—A. I don't remember what date it was. But, so far as I remember, January the 5th was on a Friday, so he got my written report on Monday, which was the 8th.

Q. I have no further questions, except for the production of the statement.

The HEARING EXAMINER. Mr. Palmer, do you have any questions?

Mr. PALMER. Yes.

REDIRECT EXAMINATION

By Mr. PALMER:

Q. Mr. Zolton, what you have stated here today has been the truth?—A. Yes.

Q. Nothing but the truth?—A. Nothing but the truth.

Q. That is all.

The HEARING EXAMINER. Mr. Zolton, I would just like to ask one question. To the best of your recollection, is the testimony you have given today the same as you had in the report that you submitted to the FBI?

A. Maybe I used a few other words.

The HEARING EXAMINER. I understand that.

A. But the meaning is the same, sir.

The HEARING EXAMINER. The substance of the statement is the same?

A. Yes.

Mr. FORER. In the interest of expedition, I am going to withdraw my demand for the production of the witness's own statement to the FBI, although I'm convinced I'm entitled to it. But I don't want to come back for another hearing. So I withdraw the demand.

The HEARING EXAMINER. The demand for the production of the witness's statement is withdrawn and there is no further necessity to produce the same, Mr. Palmer.

Mr. PALMER. Mr. Examiner, we would like to note for the record that we are perfectly willing to attempt to obtain this statement if it exists.

The HEARING EXAMINER. The record will so indicate. Are there any further questions of this witness?

Mr. FORER. I have no more.

Mr. PALMER. We have no further use of him and he would like, I think, to return to his home.

The HEARING EXAMINER. Thank you very much, Mr. Zolton. You are permitted to leave.

(Witness excused.)

Mr. PALMER. Now, Mr. Chairman——

The HEARING EXAMINER. I'm not a chairman.

Mr. PALMER. Mr. Examiner, I'm sorry. I apologize for this.

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We would like to ask, does the Chair take judicial notice of the Federal Register that we gave, or will you have us produce the original, as to the title 22, chapter I, part 51, as being the regulations under which this matter is brought?

The HEARING EXAMINER. The Chair will take judicial notice of the Federal Register citations.

Mr. PALMER. Now, sir, we would like to note for the record that Mrs. Flynn did not appear at this session of the hearing, nor did she appear at the first session on April 24, 1962. Therefore, we formally request that Mrs. Flynn answer the following questions:

(1) Were you a member of the Communist Party of the United States of America on October 20, 1961, the day the order of the Subversive Activities Control Board became final, requiring that party to register with the Attorney General pursuant to the provisions of the Internal Security Act of 1950 as amended?

(2) Were you a member of the Communist Party of the United States of America on January 26, 1962, the date of the letter notifying you of the revocation of passport No. 2016926, issued to you on March 10, 1963?

(3) Are you a member of the Communist Party of the United States of America at the present time?

(4) Were you a member of the Communist Party of the United States of America at any time during the past 12 months?

(5) If you are not now a member of the Communist Party of the United States of America, please indicate the date on which you ceased to be a member and the circumstances surrounding the termination of such membership.

Now, Mr. Examiner, if Mr. Forer, as Mrs. Flynn's attorney, will answer these questions on her behalf, we are prepared to close our presentation. If he is not, then we request the hearing be recessed to enable Mrs. Flynn to appear and apswer these questions or, as an alternative, that she submit in affidavit form her answer to these questions and that the affidavit be made a part of the record of this hearing.

The HEARING EXAMINER. Mr. Forer?

Mr. FORER. I must say I never heard of a witness being questioned in absentia before. Nor did I ever hear of a witness giving testimony through his lawyer. So it seems to me the request is entirely bizarre.

Now, so far as informing the examiner fully of the circumstances, that is that Mrs. Flynn does not intend to answer those questions or any questions by the Passport Office, so there is no point of her coming here. As the Passport Office has already stated, the Passport Office has no subpena power anyhow. I don't even see any purpose to this thing. I'm not sure I know what he asked, what he is asking you to rule or do.

Mr. PALMER. That was the reason we have no subpena power, otherwise we would have subpenaed her to be here today.

The HEARING EXAMINER. I don't believe I have any authority to direct the witness to appear here. I don't think I have any authority to make her answer questions through her counsel.

Mr. PALMER. Is it the answer of Mr. Forer that he does not care to answer these questions.

Mr. FORER. The answer of Mr. Forer is that Mrs. Flynn does not care to answer these questions.

Mr. PALMER. That completes our case, Mr. Examiner.

The HEARING EXAMINER. Do you have any witnesses, Mr. Forer?

Mr. FORER. May I get a look at exhibit 1, the passport application?

The HEARING EXAMINER. Right here. [Handing exhibit 1 to Mr. Forer.]

Mr. FORER. Thank you. I wish to call to your attention on this exhibit the following information: First, that it appears from the exhibit that Mrs. Flynn was born on August 7, 1890. Second, it appears that her occupation is a writer. Third, it appears from this exhibit that this is a renewal passport, so that Mrs. Flynn—well, this is my interpretation of it.

Mr. SEELEY. This is an original.

Mr. FORER. This was her first passport.

Mr. SEELEY. No, sir.

Mr. PALMER. Her other passport had expired a few years before.

Mr. FORER. What I'm driving at is, I don't mean the passport is not an original, but she had a passport before she had this passport.

Mr. PALMER. It has nothing to do with this case.

The HEARING EXAMINER. Mr. Forer, I don't object to your calling my attention to matters on that passport. The exhibit speaks for itself.

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Mr. FORER. All I'm doing is calling to your attention that this indicates she had a previous passport.

The HEARING EXAMINER. It isn't your position that the information contained therein must be accepted for the truth of the matters that are stated there?

Mr. FORER. Of course not. But I don't think there is any dispute that Mrs. Flynn was born on August 7, 1890, in Concord, N.H., or that the passport, this passport was not her first passport. That is all I wanted to say, or that she listed her occupation as a writer.

The HEARING EXAMINER. I will take cognizance of what the exhibit contains.

Mr. FORER. I have no evidence to introduce. The only remark I want to make is I have been sitting here waiting for them to put on testimony to show why there should not—why Mrs. Flynn should not be permitted to travel abroad. Mrs. Flynn appears to be a rather elderly lady. She is a writer. She has had this passport for some years and apparently had passports before that. There had been absolutely no evidence to show that if she goes abroad she will do anything bad, or any reason why she should be denied a passport. That is all I have to say.

We rest.

The HEARING EXAMINER. One further thing.

(Discussion off the record.)

The HEARING EXAMINER. Mr. Forer, I intend also to take judicial notice of a recital in the Federal Register of Saturday, October 21, 1961, page 9923, stating as follows:

"SUBVERSIVE ACTIVITIES CONTROL BOARD

"(Docket No. 51–101)

"COMMUNIST PARTY OF THE UNITED STATES OF AMERICA

"NOTICE OF FACT THAT ORDER HAS BECOME FINAL REQUIRING REGISTRATION AS A COMMUNIST-ACTION ORGANIZATION

"*Attorney General of the United States, Petitioner* v. *Communist Party of the United States of America, Respondent.*

"Pursuant to Section 13(k) of the Internal Security Act of 1950, 64 Stat. 987, notice is hereby given that the Order of the Subversive Activities Control Board, duly issued on April 20, 1953, in accordance with Section 13(g) of said Act, requiring the Communist Party of the United States of America to register as a Communist-action organization under Section 7 of said Act, became final on the 20th day of October 1961.

"SUBVERSIVE ACTIVITIES CONTROL BOARD,
"DOROTHY MCCULLOUGH LEE, *Chairman.*

"F.R. Doc. 61–10059, filed Oct. 20, 1961; 8:49 a.m.)"

I ask you, Mr. Forer, is there anything incorrect in that Federal Register citation?

Mr. FORER. Of course not.

The HEARING EXAMINER. Mr. Palmer?

Mr. PALMER. No, sir.

Mr. FORER. Anyway, you will mention you should take judicial notice of it. Would you oblige me? I missed the date of it, that is the Federal Register for what date?

The HEARING EXAMINER. October 21, 1961, volume 62, No. 204.

Mr. FORER. Volume 62, No. 204. And what's the page of that?

The HEARING EXAMINER. The page number is 9923.

Mr. FORER. And when does it say the order became final?

The HEARING EXAMINER. Well, as far as I am concerned, why don't you read it. [Handing the document to Mr. Forer.]

Mr. FORER. OK.

The HEARING EXAMINER. Is there anything further, gentlemen?

Mr. PALMER. Nothing further, Mr. Examiner, from us.

Mr. FORER. Nothing further.

The HEARING EXAMINER. I would like very much to have briefs in this case. Mr. Palmer, how many days would you want for a brief?

Mr. PALMER. Oh, at your pleasure.

The HEARING EXAMINER. Would 20 days be sufficient for you?

Mr. PALMER. Yes.

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The HEARING EXAMINER. Mr. Forer?

Mr. FORER. Do you really need that much time? I am just anxious that a decision be rendered soon.

The HEARING EXAMINER. Mr. Forer, would you want to submit briefs at the same time, or would you prefer to have their brief and then, say, 10 days to answer?

Mr. FORER. No, no, no. Let's have this. Any brief I will submit will be within the 20 days. I don't want to make a reply brief. But I do want the examiner to know that I doubt that I will file a brief.

Mr. PALMER. We have no disposition to file one, if Mr. Forer does not file one.

The HEARING EXAMINER. I think it would be very helpful for the examiner to have a brief, Mr. Palmer, and I would suggest that briefs be filed, if any, within 20 days for any reply briefs.

Mr. FORER. I will waive the filing of a brief.

The HEARING EXAMINER. You waive the filing of the brief?

Mr. FORER. Yes.

The HEARING EXAMINER. I would prefer to have a brief, Mr. Palmer.

Mr. PALMER. All right.

The HEARING EXAMINER. There being no further testimony, gentlemen, to be adduced, the hearing is closed.

(Whereupon, at 11:25 a.m. the hearing was closed.)

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NOMINATIONS OF McCONE, KORTH, AND HARLAN

HEARING

BEFORE THE

COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

JOHN A. McCONE, OF CALIFORNIA, TO BE DIRECTOR OF CENTRAL INTELLIGENCE

FRED KORTH, OF TEXAS, TO BE SECRETARY OF THE NAVY

NEIL E. HARLAN, OF MASSACHUSETTS, TO BE ASSISTANT SECRETARY OF THE AIR FORCE

JANUARY 18, 1962

Printed for the use of the Committee on Armed Services

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NOMINATION OF FRED KORTH TO BE SECRETARY OF THE NAVY

THURSDAY, JANUARY 18, 1962

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10:30 a.m., in room 212, Senate Office Building.

Present: Senators Russell (chairman), Stennis, Symington, Jackson, Thurmond, Engle, Bartlett, Cannon, Saltonstall, Smith (Maine), Case (South Dakota), Bush, and Beall.

Also present: Harry L. Wingate, Jr., chief clerk; Herbert S. Atkinson, assistant chief clerk; William H. Darden, T. Edward Broswell, and Gordon A. Nease of the committee staff.

Chairman RUSSELL. Nominations to fill three very important civilian positions are pending before the committee. All three of the nominees have received recess appointments and have been installed in their respective offices and the hearing this morning was scheduled in anticipation that covering nominations would be sent to the Senate promptly after the session convened.

However, the nominations were not actually received in the Senate until January 15, and they have, therefore, not been pending here for the 7 days required by our Committee on Rules.

Since other meetings have been scheduled to follow this one, not only of the full committee, but of our subcommittees, and since it is apparent that one of the principal purposes of the 7-day rule—adequate notice—has been fulfilled, we are adhering to the original schedule, and the committee can decide in executive session about the time of reporting any nominations on which favorable action may be taken this morning.

Under ordinary circumstances, we would first receive the testimony from the nominee for the Office of Director of Central Intelligence. However, there is some indication that the other two nominations will require much less time, and to assure that we will consider all of them this morning, I have suggested to Mr. McCone, with his indulgence, that we depart from a strict adherence to that ordinary committee protocol and that we take the other nominees first.

I will therefore ask Mr. Fred Korth, of Texas, who has been nominated to be Secretary of the Navy, to take the chair there at the end of the table. Mr. Korth has had previous service in the Department of Defense.

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I am sure most of the members of the committee will recall that he was Assistant General Counsel and later served as Assistant Secretary of the Army.

We are pleased to have you here this morning, Mr. Korth. We congratulate you on your nomination. You have been before us before, and, for the benefit of our members and for the records of this committee, we would like to have a brief statement of your background, a biographical sketch.

STATEMENT OF FRED KORTH, NOMINEE TO BE SECRETARY OF THE NAVY

Secretary KORTH. Thank you, Mr. Chairman.

I believe that the members of the committee have been handed a short biographical sketch, but I do want to express my appreciation to all of the members for this privilege of appearing before you at this time.

To give you a little more background on my career, I should like to say that I was born in Yorktown, Tex., a small city in south Texas, in 1909, and grew up in Texas on a ranch near San Antonio.

I attended public schools in San Antonio, graduated from the University of Texas in 1932 with a bachelor of arts degree and from George Washington University in 1935 with a law degree.

Prior to my graduation from law school, I met and married my wife, Vera Connell, and we have three children: Nina Maria, who has two daughters, her husband is an assistant U.S. attorney in the northern district of Texas; a son, Fritz, who is a freshman at the University of Texas Law School, having graduated from Princeton last June; and a younger daughter, Verita, who is in high school. She is presently in high school at Fort Worth, although at the change of terms this coming month she will travel to Washington to join Mrs. Korth and me.

I was admitted to the Texas and the District of Columbia bars in 1935. I engaged in the practice of law with the now dissolved firm of Thompson & Barwise from 1935 to 1941, when I entered the service of the U.S. Army Air Corps at that time, advancing to the grade of lieutenant colonel when I was separated in 1946.

I then practiced law again in Fort Worth from 1946 to 1951 in partnership with Fred Wallace, and in 1951 I came to Washington, I thought for a 2-week period, to help Frank Pace, the then Secretary of the Army, but that 2 weeks turned out to be 2 years, until the change of administration in January of 1953.

Subsequent to that, I became executive vice president and a director of the Continental National Bank in Fort Worth. I continued with that bank and became president of the bank in 1959. I have resigned as president and director of the bank effective January 2. Prior to my coming to Washington, I was a director of the Bell Aerospace Corp., the Professional & Business Men's Insurance Co., and the Texas & Pacific Railway Co.--all of which positions I have resigned.

I believe that the committee has likewise available to it a list of my stock holdings, and in that connection I should like to state that I have disposed of all stocks which might have even a remote defense implication.

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I do retain stocks in several banks, in one small children's garment manufacturing company in Jamaica which does no business whatsoever with the Government or with the Defense Establishment, and, likewise, own certain real estate ranches. I have an interest in several in Texas, aggregating to a total of perhaps some 12,000 acres.

I have a very minor oil interest. The total income from the oil interest perhaps amounts to no more than $500 per year. This was as a result of an investment which was not very wise, I might add, Mr. Chairman.

I believe that concludes my oral statement. I shall, of course, be pleased to answer any questions which may be asked me.

(The nomination reference and biographical statement follow:)

NOMINATION REFERENCE AND REPORT

IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
January 15, 1962.

Ordered, That the following nomination be referred to the Committee on Armed Services:

The following-named person, who was appointed during the last recess of the Senate, to the office indicated:

Fred Korth, of Texas, to be Secretary of the Navy, vice John B. Connally, Junior, resigned.

FRED KORTH

Born September 9, 1909, at Yorktown, Tex.

Family: Wife, Vera Connell Korth; three children, Nina Maria Cole, Fritz-Alan, and Vera Sansom (Verita) Korth.

Education: Public schools, San Antonio, Tex.; University of Texas, A.B., 1932; and George Washington University, LL.B., 1935.

Military service: Served in Air Transport Command of U.S. Army from 1942 to 1946, advancing to the rank of lieutenant colonel.

Previous Government service: Deputy Department counselor, Department of the Army, 1951–52; Assistant Secretary of the Army (Personnel and Reserve Forces), 1952–53.

Legal associations: American Bar Association, Texas Bar Association, and American Law Institute. Member of Texas and District of Columbia bars since 1935.

Business and professional experience: Private practice of law in firm of Thompson & Barwise, 1935–42 and in the firm of Korth & Wallace, Fort Worth, 1946–51; executive vice president and director, Continental National Bank, Fort Worth, 1953–59; president, Continental National Bank, 1959–January 1962; director, Bell Aerospace Corp., 1960–61; Director, Panama Canal Company; director, Professional and Business Men's Insurance Co., 1955–61; and, director, Texas & Pacific Railway Co., 1960–61.

Past organizations: Executive committee, Southwestern Exposition and Fat Stock Show; executive committee, Fort Worth Chamber of Commerce; American Bankers Association; and Texas Bankers Association.

Past civic activities: Chairman, Tarrant County Committee for 1960 White House Conference on Children and Youth; chairman, Red Cross, Tarrant County; past member national council of National Planning Association, Washington; member, investment advisory board of Teachers Retirement System of Texas; and member of board of directors, Texas United Fund, Inc.

Miscellaneous: Member of Navy League of the United States since 1952; trustee (inactive), Texas Christian University; and, treasurer (inactive), Texas & Southwestern Cattle Raisers Association.

Awards: Army Exceptional Civilian Award; Army Outstanding Civilian Service Award; Civic Achievement Award of B'nai B'rith; and honorary doctor of laws degree from George Washington University.

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Chairman RUSSELL. Is your interest in oil property—which is a rather minor amount, but it involves the general purposes of this committee's inquiry—is that income derived from the sale of crude oil?

Secretary KORTH. Yes, sir; it is. It is a fractional interest in about three small wells in Louisiana in which I participated with a number of other people on the drilling of the well. But the oil, of course, is sold to a major company. I don't know which company purchases that.

Chairman RUSSELL. But it is not sold directly to the Government?

Secretary KORTH. No, sir.

Chairman RUSSELL. That is a very clear and comprehensive statement, Mr. Korth.

Senator Saltonstall?

Senator SALTONSTALL. I have just one question. It is not quite clear from your statement but perhaps you have said it. Have you resigned as president of the Continental Bank?

Secretary KORTH. I have, and as director also.

Senator SALTONSTALL. I have no further questions.

Chairman RUSSELL. Senator Stennis?

Senator STENNIS. Mr. Chairman, I do not think I have any further questions.

I have satisfied myself already as to Mr. Korth's outstanding ability, and his worth. His approach to this is very good, I think. I certainly think it is an important office and wish him well.

Secretary KORTH. Thank you, sir.

Chairman RUSSELL. Senator Smith?

Senator SMITH. Yes, Mr. Chairman. Mr. Secretary, have you given any thought to the length of time you would be willing to serve in the post as Secretary of the Navy in the event you are confirmed?

Secretary KORTH. I have really given no thought to this, Senator. I certainly intend to serve as long as the President desires that I serve, barring any unforeseen circumstances, and, likewise, as long as I think that I can be effective in my position.

Senator SMITH. You have no plan, then, to leave after 1 or 2 years?

Secretary KORTH. I have made no plans in that regard, Senator.

Senator SMITH. And do I correctly understand your answer to be that you would be willing to serve as long as you do so at the pleasure of the President and so long as you feel that you can make a substantial contribution to the Navy and the Defense Establishment?

Secretary KORTH. This is my present opinion, Senator.

Senator SMITH. Then do I further correctly understand your answer to be that you have no plans to leave after any specified period of time; that you have no plans to go back to any particular employment; that you have no obligations, no commitments whatsoever with respect to that; and that none have been made by you?

Secretary KORTH. I have made none ——

Senator SMITH. Or to you?

Secretary KORTH. Other than this: I am hopeful, Senator, that when my Government service is finished, that I may go back to Fort Worth and might also become associated again with the bank which I was formerly associated with.

Senator SMITH. Thank you very much, sir.

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You may be interested to know that my first two questions are verbatim exactly from questions put by the chairman of this committee to your predecessor on January 18, 1961, on page 7 of the hearings of that date.

That my third and fourth questions were based on the very answers given by your predecessor to those two questions asked of him by the chairman.

Mr. Chairman, I make these observations in fond and inspiring memory of the forthright and vigorous statements of the successful Democratic Presidential nominee in 1960, when he pledged that any and everyone joining his New Frontier team after inauguration would be expected to be enlisted for the full 4-year duration of his administration in derogating contrast to what happened in the administration he was criticizing.

It is to be regretted, Mr. Chairman, that Secretary Korth's predecessor did not stay for the duration and not even for a full year. I cannot in my own heart conclude that he left because he did not feel that he could no longer make a substantial contribution to the Navy and to the Defense Establishment, but it does appear that such tenures are cut short whenever specialized duty calls, whether it be a Republican administration or a Democratic administration.

Thank you.

Chairman RUSSELL. Senator Symington?

Senator SYMINGTON. Mr. Chairman, I have been here only a few minutes. I have been listening with great interest to the able Senior Senator from Maine, and I am glad to hear Mr. Korth.

Mr. Secretary, we have been friends for a good many years. As I understand it, you are going to see this job through, is that correct?

Secretary KORTH. I am going to do my best, sir.

Senator SYMINGTON. Subject to the approval of the President?

Secretary KORTH. Yes, sir.

Senator SYMINGTON. You have no plans to leave to run for anything.

Secretary KORTH. Absolutely not. I have no political ambitions for elective office, sir, at all.

Senator SYMINGTON. Mr. Chairman, all I have known about Mr. Korth is very fine, and it is always a privilege to see somebody of his caliber in the Government. I have no further comments or questions.

Chairman RUSSELL. I may say that I would have asked those questions substantially of Mr. Korth, as I had asked them of all the nominees before, except for the fact that Mr. Korth's record shows that he stayed here until he left at the request of an incoming President.

He did stay with the job to which he was appointed before and served out his term.

Senator Case?

Senator CASE. Thank you, Mr. Chairman. Mr. Korth, is this statement submitted on January 16, 1962, entitled "Stock Holdings and Real Estate Interests Owned and Positions Held by Mr. and Mrs. Fred Korth," a full disclosure of all stock or ownership interests that you may have or of positions occupied in any corporate or private business company?

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Secretary KORTH. It is sir. I am not sure that within that statement it is clear that I have submitted by resignations from three organizations where they have not as yet been accepted: One, Texas Christian University, a university in Fort Worth; the other, the Hockady School for Girls, a girls' school in Dallas, Tex.; and the third, as treasurer of the Texas & Southwestern Cattle Raisers Association.

In each of those instances the organizations have not accepted my resignation. I, however, do not see that there would be any possible conflict of interest. There are no duties involved with these respective positions, and they are fully aware of the fact that I can make no contribution during the time that I am working with the Government.

I should perhaps add, to make the financial statement a little more complete--and I only thought of it now--that, certainly, Mrs. Korth and I do have ownership in U.S. Government bonds and savings bonds, which are not, however, of any great consequence, but I do not believe that they are actually contained on the statement.

Senator CASE. Are you familiar with what is known, or what has been given the name of the Berry wool amendment?

Secretary KORTH. The what, sir?

Senator CASE. The Berry wool amendment.

Secretary KORTH. I am not, sir.

Senator CASE. It is an amendment which Congressman Berry of South Dakota has repeatedly offered successfully to appropriation bills denying the use of funds for the purchase of foreign wools for garments for men in the armed services to which those appropriations apply.

Recently, and with considerable emphasis, journals of the stock growers and the cattle producers have been proposing that a similar amendment should be sought to require that beef fed, or red meat, I should say, fed to members of the Navy should be of domestic origin.

Would you find it embarrassing if legislation of that sort were produced in case the Texas & Southwestern Cattle Raisers Association did not accept your resignation?

Secretary KORTH. Sir, my primary and only loyalty is to the U.S. Government. I would not let a matter such as that in any wise disturb me in that allegiance and that loyalty. I am not familiar with the proposed legislation, but I might state this: That, as I understand it and I am new in the job as I understand it, the Navy has no responsibility for the procurement of provisions such as this. This is a function which I believe is now performed by the Defense Supply Agency.

Senator CASE. Is that true on getting supplies for ships at sea?

Secretary KORTH. Yes, sir; I would think so, because we have refrigerator ships which supply those ships that are at sea, and they take off, certainly normally, except in emergency, from the United States where they have been located.

Senator CASE. Do not misunderstand. I happen to be in the cattle business myself.

Secretary KORTH. I understand.

Senator CASE. But I would not want a Secretary to feel that because of his affiliation with a cattle raisers' association, he had to lean over backward in order to show that he was not prejudiced in favor of interests. I would want him to be able to be objective about it.

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Secretary KORTH. I propose to lean neither way, sir.

Senator CASE. Thank you.

Thank you, Mr. Chairman.

Chairman RUSSELL. Mr. Secretary, I do not want to embarrass you so I, therefore, will not ask you if you have any vital feelings on either side of the oleomargarine question.

Secretary KORTH. I am aware of that, Mr. Chairman.

Chairman RUSSELL. Senator Thurmond?

Senator THURMOND. Mr. Chairman, I have no questions. I think our Government is fortunate to secure the services of such an able and well-qualified man to be Secretary of the Navy.

I want to congratulate you on your appointment, and I wish you every success.

Secretary KORTH. Thank you, Senator.

Chairman RUSSELL. Senator Bush?

Senator BUSH. No questions, Mr. Chairman.

Chairman RUSSELL. Senator Bartlett?

Senator BARTLETT. Mr. Secretary, I have been wondering, in view of the fact that you were formerly an Assistant Secretary of the Army, whether the Army considers your present appointment as a step toward unification or desertion, but I will not ask you to answer that.

I want to say, Mr. Secretary, that I think the Government is most fortunate in having your services, and, in any case, I should have voted for the confirmation of your nomination. But I was all the more inclined to do so when you visited me the other day and told me that one objective of your administration would be to secure for the 17th Naval District in Alaska a boat bigger than a rowboat, which is about the biggest they now have.

Secretary KORTH. Yes, sir.

Senator BARTLETT. That is all, Mr. Chairman.

Chairman RUSSELL. Senator Cannon?

Senator CANNON. Thank you, Mr. Chairman.

Mr. Secretary, you do not anticipate that these organizations will not accept your resignation. It is just that they have not acted on them at the present time?

Secretary KORTH. I don't know, sir. I would think that, certainly, with reference to the educational institutions, they may perhaps prefer not to accept it.

With reference to the Cattle Raisers Association, as I indicated, it is more of an honorary position than an operating position. I attended the meetings, but, really, insofar as treasurer, and as is the case in many organizations, it is a title rather than anything else.

Senator CANNON. You would not want to imply as treasurer that the Texas & Southwestern Cattle Raisers Association had no funds, would you?

Secretary KORTH. They are solvent, sir.

Senator CANNON. Thank you. Mr. Secretary, I have no further questions.

Mr. Chairman, I think the Government is very fortunate to have a man of Mr. Korth's ability.

Chairman RUSSELL. Senator Beall?

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Senator BEALL. Mr. Chairman, I am very proud to say that I was very much impressed with the Secretary's visit when he came to the office, but I neglected, Mr. Secretary, to ask you how you felt about sending repair work to private yards, Navy repair work.

Secretary KORTH. Senator, I really have not yet had the opportunity to review the facts with reference to this, and for me to give you an opinion at this time, I think, would be premature, sir.

Senator BEALL. Thank you, Mr. Chairman.

Chairman RUSSELL. Senator Jackson?

Senator JACKSON. Mr. Chairman, I have not anything to ask. Everything I know about Mr. Korth is very good. He has an excellent background, and I am sure he will do a fine job as Secretary of the Navy. I want to congratulate him.

Secretary KORTH. Thank you, sir.

Chairman RUSSELL. Senator Engle?

Senator ENGLE. I have no comment, Mr. Chairman.

It is a pleasure to see the Secretary. He has done an excellent job. I intend to support him, and I hope he will not forget that California is a great naval State. We have more ports than any State in the Nation, and we will look forward to seeing him out there.

Secretary KORTH. Thank you, sir.

Chairman RUSSELL. I have also heard it said on the floor of the Senate a number of times that they had more contracts than any other State.

Senator BEALL. I was going to make that observation, Mr. Chairman, that we in Maryland have some very fine shipyards.

Senator ENGLE. We are still hurting, Mr. Chairman.

Chairman RUSSELL. If there are no further questions——

Senator CASE. Mr. Chairman, might I just say to Mr. Korth with respect to this treasurership of the Cattle Raisers Association, and, as I say, I am in the cattle business, but I think that I should insist upon your resignation being accepted in that instance because I foresee that this type of legislation may readily come before the Department.

And, since it would affect the Navy, you might be called upon for a recommendation, and I think it would leave you in a less vulnerable position if you did insist on the acceptance of your resignation there.

Mr. Chairman, I shall make available to the prospective Secretary and to the chairman the clippings from some of the stockgrowers' papers which are referred to as a very serious matter, and it is not idly that I raise the point.

Chairman RUSSELL. I did not think it was. I did not know that the nominee had had an opportunity to inform himself of the subject.

A man coming into a position as complex as this would find it difficult to know everything about every facet of his job before having occupied the office, or for only a week or so.

Secretary KORTH. Mr. Chairman, I certainly have no objection to pursuing and going forward and insisting upon the acceptance of this resignation.

This presents no problem whatsoever to me, and I am happy to accept the Senator's suggestion.

Chairman RUSSELL. I only wish to say for the benefit of those who might be present here today that there is no rule of this committee that requires any nominee to resign any position as trustee of an

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educational institution. If there is, I have never heard of it before. I do not know of any compulsion that you resign from trusteeship of two educational institutions.

Secretary KORTH. Mr. Chairman, I was actually directing my remarks to the Cattle Raisers Association, but I will be happy to do the rest.

Chairman RUSSELL. Anything further from any member of the committee?

If not, Mr. Korth, we thank you for your statement to the committee.

Secretary KORTH. Thank you, sir.

(On Monday, January 22, in executive session, the committee unanimously voted to report favorably to the Senate the nomination of Mr. Korth to be Secretary of the Navy.)

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NOMINATION OF NEIL E. HARLAN TO BE ASSISTANT SECRETARY OF THE AIR FORCE

Chairman RUSSELL. The next nomination is that of Mr. Neil E. Harlan, of Massachusetts, to be an Assistant Secretary of the Air Force. Have a seat, Mr. Harlan.

I believe this is your first appearance before this committee. We welcome you here and we extend congratulations to you upon this important public service that has been placed in your hands.

We will be pleased to have you make a statement covering your experiences as to the nature of the duties you are expected to perform and some of the members of the committee may have questions for you.

You may proceed.

STATEMENT OF NEIL E. HARLAN, NOMINEE TO BE AN ASSISTANT SECRETARY OF THE AIR FORCE

Mr. HARLAN. Thank you, Mr. Chairman.

I have submitted previously, and I think you have before you, a statement of my background and experience, but I would like to summarize it for you very briefly.

I was born in Cross County, Ark., in 1921, and attended elementary and high school there in a community called Bay Village, which is near Cherry Valley, in the eastern part of the State.

I enrolled in the University of Arkansas in 1938, received a bachelor's degree in 1947. During the intervening period I spent 3½ years in the Army, most of which was spent with the 8th Armored Division in the European theater.

I was employed with Homer K. Jones & Co., a firm of certified public accountants in Memphis, Tenn., in 1947 and 1948, at which time I left to attend Harvard Business School. I received a master's degree from Harvard Business School in 1950, and came to New York, where I was employed as assistant educational director of the American Institute of Accountants. After being there shortly more than a year, I was asked to come on to the faculty of Harvard Business School and accepted that invitation.

During the first year of my service there, I spent most of my time as an employee of Harvard University with the Air Force on a study of financial control and organization.

I completed my doctor's degree at Harvard in 1956, also in business administration.

I have been at Harvard since 1951 and have held ranks of assistant professor, associate professor, and on January 1 of this year was appointed professor of business administration. While I have been at Harvard, I have taught and done research in the fields of management control and managerial economics. I have also conducted research in aircraft procurement in 1953 and 1954, either full or part time during those 2 years.

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During the years that I have been at Harvard Business School, I have also served as consultant on matters of financial planning, organization, and control to companies in a variety of industries which are listed in the sketch that I have given you.

I have submitted to you a statement of the rather meager investments I hold. I am informed that there is only one stock on the list that does Government business. That is the John Morrell & Co., which I hold through a small investment club, and I plan to dispose of that on January 31 of this year, unless the committee would like me to do it earlier.

On my consulting arrangements, they have all been suspended, and if I am confirmed by this committee, they will all be terminated immediately.

I have asked and received from Harvard University a leave of absence for 1 year. I have informed them that at the end of that year, if it is the pleasure of the President, I shall ask for another year's leave of absence. And that at the end of that year, if it is at the pleasure of the President, I shall resign from the university to stay here.

That concludes my statement.

(The nomination reference and biographical sketch follow:)

NOMINATION REFERENCE AND REPORT

IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
January 15, 1962.

Ordered, That the following nomination be referred to the Committee on Armed Services:

The following-named person, who was appointed during the last recess of the Senate, to the office indicated:

Neil E. Harlan, of Massachusetts, to be an Assistant Secretary of the Air Force, vice Lyle S. Garlock, resigned.

BIOGRAPHY OF NEIL E. HARLAN

Neil E. Harlan was born in Cherry Valley, Ark., on June 2, 1921. He attended public schools in Cherry Valley, Ark.; University of Edinburgh, Scotland (one quarter, 1946); received bachelor of science degree, University of Arkansas, 1947; master's degree in business administration, Harvard University, 1950; and doctor's degree in business administration from Harvard University, 1956.

In June 1943, Mr. Harlan entered the U.S. Army as a private; was commissioned 2d lieutenant in August 1944; served as company commander and platoon leader in 80th Tank Batallion, 8th Armored Division, through Ardennes, Rhineland, and Central European campaigns; and received an honorable discharge in September 1946 with the rank of captain.

Mr. Harlan was employed by Homer K. Jones & Co., certified public accountants, Memphis, Tenn., in 1947–48; and the American Institute of Certified Public Accountants, New York City, in 1950–51. From 1951 to 1961, Mr. Harlan was employed by Harvard University Graduate School of Business Administration during which time he was engaged in the following activities: 1951–52, served as full-time consultant to the Air Force and participated in the design and installation of the appropriation and expense system. In 1952–54 engaged in research in airframe procurement—published "Management Control in Airframe Subcontracting." During 1954–58 was assistant professor and was teaching member of the Harvard Business School faculty; in 1958–61 was associate professor of business administration; from 1959–60 served as chairman of the operating board of the master's degree program; and on January 1, 1962, became professor of business administration. Mr. Harlan has also served as consultant to companies in aluminum, automotive, drug, insurance, petroleum, and textile industries and with various companies on operating and organizational problems. He is the coauthor of "Cases in Controllership," published in 1958; and "Cases in Account-

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ing Policy," published in 1961; and "Managerial Economics" to be published in April 1962.

Mr. Harlan is a member of the American Institute of Certified Public Accountants and of the Controllers Institute of America.

In 1952 Mr. Harlan married Martha Almlov of Melrose, Mass. They have three children: Lindsey Beth; Neil E., Jr., and Sarah Ellis. The family resides at 82 Sears Road, Wayland, Mass.

Chairman RUSSELL. In other words, if the President decides you are to serve more than 1 year, you will resign your professorship?

Mr. HARLAN. Yes, sir; and I have so indicated to Harvard.

Chairman RUSSELL. Is Harvard getting along pretty well with the new professors they are getting?

Mr. HARLAN. I do not know if they will get along as well after I leave, but they probably will.

Chairman RUSSELL. I hope they all learn their way around the campus, anyhow.

Senator Saltonstall?

Senator SALTONSTALL. Mr. Chairman, the fact that Mr. Harlan graduated from Arkansas relieves the problem of Harvard in your mind does it not?

Chairman RUSSELL. I have no particular opinion as to Arkansas. I am hopeful that the oldest chartered university in the United States may get some minor positions filled from the University of Georgia.

Senator SALTONSTALL. Mr. Chairman, may I ask Mr. Harlan what duties do you expect to have in the Air Force?

Mr. HARLAN. My duties will be Assistant Secretary for Financial Management. The primary function of that is to provide information with which the Air Force and the Department of Defense can make its request to the Congress for funds, and the other major part of that duty is to help to see that those funds are used as efficiently as possible.

My early assignment is to take a close look at the methods by which we manage the weapons system acquisition in the Air Force.

Senator SALTONSTALL. Then do I state it correctly that you are going to take Mr. Garlock's position so far as coming before the Appropriations Committees of the House or the Senate?

Mr. HARLAN. That is correct.

Senator SALTONSTALL. As the civilian in charge of the budget on problems of the Air Force?

Mr. HARLAN. That is correct, sir.

Senator SALTONSTALL. Then, in addition to that, you are going to try and stimulate better management and procurement and efficiency methods of procurement in the Department?

Mr. HARLAN. If I can make a contribution in that respect, I certainly intend to.

Senator SALTONSTALL. That will be part of your duties?

Mr. HARLAN. Yes.

Senator SALTONSTALL. So that your duties will be on a management basis and on a fiscal basis?

Mr. HARLAN. Yes, sir.

Senator SALTONSTALL. Thank you, Mr. Chairman.

Chairman RUSSELL. Senator Stennis?

Senator STENNIS. Mr. Harlan, will you have to do with the evaluation of bids?

Will you have anything directly to do with the awarding of major contracts?

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Mr. HARLAN. It is my understanding, sir, that the Assistant Secretary for Materiel takes the major role there. Certainly, if there are dollars attached at some point, I will have to have a hand in that, but, as far as the direct awarding of contracts is concerned, it is not my prime responsibility.

Senator STENNIS. It is not in your chain of command or responsibility, at least?

Mr. HARLAN. No, sir.

Senator STENNIS. But that is handled by Materiel?

Mr. HARLAN. Yes, sir.

Senator STENNIS. That is all, Mr. Chairman.

Chairman RUSSELL. Senator Smith?

Senator SMITH. Mr. Harlan, are you enlisted for the duration in the New Frontier?

Mr. HARLAN. I am here, I would say, for the duration of the New Frontier, for the duration of this current administration, if I feel that I can continue to be effective in the job.

Senator SMITH. Thank you, sir.

Chairman RUSSELL. Senator Symington?

Senator SYMINGTON. Mr. Chairman, all I have heard about Mr. Harlan is very good. He replaces Mr. Garlock, who, as we all know, is a most able man. He has certainly been well trained in his past activities.

His record apparently shows that he is an expert in the field of accounting and also that he is tied up to the question of figures and the question of management, and I think that the administration is fortunate to get him into this position. I look forward to voting for his confirmation.

I have no questions.

Chairman RUSSELL. Senator Jackson?

Senator JACKSON. Mr. Chairman, I merely want to make the observation that it is quite clear that Mr. Harlan is very well qualified. I do hope, assuming he gets along fine and that the President wants him to continue, that he will stay on.

One of the problems that we have in the national security field is the turnover in personnel. As you know, the Senate passed a resolution unanimously urging that there be longer continuity of service on the part of those who served in the top national security posts.

I believe this is the general attitude of the Senate, assuming that the work is satisfactory and so on.

Mr. HARLAN. I have every intention of staying, Senator Jackson.

Senator JACKSON. That is all, Mr. Chairman.

Chairman RUSSELL. Senator Case?

Senator CASE. Mr. Chairman, reading the biography of Mr. Harlan as it was submitted to the committee, it would seem to be evident that he has an unusually good background in business administration for a Secretaryship which carries with it responsibility in financial management.

I also note with interest his war record in World War II; that he has apparently a very commendable record of personal service which will give him an understanding of the problems and points of view of the men who are in front-line duty, so to speak.

I think those are full and excellent qualifications.

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In concluding, I merely observe that it appears that we have an Arkansas traveler on the New Frontier.

Chairman RUSSELL. Senator Thurmond?

Senator THURMOND. I have no questions, Mr. Chairman.

Chairman RUSSELL. Senator Engle?

Senator ENGLE. I have no questions, Mr. Chairman, but I would like to observe that it is nice to have an Arkansas traveler who went to Harvard.

Chairman RUSSELL. Senator Bush?

Senator BUSH. No questions, Mr. Chairman.

Chairman RUSSELL. Senator Bartlett?

Senator BARTLETT. No questions.

Chairman RUSSELL. Senator Beall?

Senator BEALL. No questions.

Chairman RUSSELL. Senator Cannon?

Senator CANNON. No questions.

Chairman RUSSELL. Any further questions?

If not, we thank you very much, Mr. Secretary Harlan.

Mr. HARLAN. Thank you, Mr. Chairman.

(On Monday, January 22, in executive session, the committee unanimously voted to report favorably the nomination of Mr. Harlan to be an assistant Secretary of the Air Force.)

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NOMINATION OF JOHN A. McCONE TO BE DIRECTOR OF CENTRAL INTELLIGENCE

Chairman RUSSELL. The last nomination is that of Mr. John A. McCone, to be Director of Central Intelligence.

In this period through which we are passing, this office is perhaps second only to the Presidency in its importance.

I am sure that most of the members of the committee will remember Mr. McCone from his prior service with the Government as Under Secretary of the Air Force in 1950–51. He then served as Chairman of the Atomic Energy Commission, I believe, beginning in 1958.

Mr. McCone, your nomination is an indication that the President of the United States reposes special trust and confidence in your ability. We are glad to have you here this morning. We hope you will give us a statement on your views regarding this office and as to your background.

Before you begin that statement, though, Mr. McCone, Senator McCarthy will make his statement at this time.

STATEMENT OF HON. EUGENE J. McCARTHY, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator MCCARTHY. Mr. Chairman and members of the committee, as the chairman of your committee has indicated, this is, in my judgment, one of the most important confirmations which the Senate is called upon to make.

This committee is, of course, charged with the primary and initial responsibility of acting for the Senate in considering the fitness and the qualifications of a Presidential nominee for confirmation by the Senate as the Director of the Central Intelligence Agency.

The action of the Senate under its constitutionally defined responsibilities will, as the members of this committee know, depend primarily upon your recommendation. In my opinion, this appointment for confirmation ranks ahead of most Cabinet confirmations for a number of reasons: Because of the importance of the work of the Central Intelligence Agency, because of the relative freedom of action which is given to the head of the Central Intelligence Agency and to his subordinates, because of the lack under existing practice of any kind of continuing direction or effective review of Central Intelligence Agency activities by the Congress itself.

I have in the past supported and advocated establishment of a joint committee of the Congress to exercise some kind of continuing supervision over the activities of this agency, somewhat in the same manner that the Joint Committee on Atomic Energy operates. If such a committee or a comparable committee existed, the choice of the head of the CIA and the Senate confirmation would not be as critical or demanding.

There is at the present time no regular or normal procedure in existence or in use today by which committees of the Congress and

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the Congress, itself, are consulted or regularly informed on Central Intelligence Agency activities.

During a discussion of a proposed Joint Committee on Central Intelligence on the floor of the Senate on April 9, 1956, Senator Mansfield asked:

> How many times does CIA request a meeting with the particular subcommittees of the Appropriations Committee and the Armed Services Committee?

to which it does report somewhat irregularly.

Senator Saltonstall, a member of both committees, replied:

> * * * at least twice a year that happens in the Armed Services Committee and at least once a year it happens in the Appropriations Committee. I speak from my knowledge during the last year or so * * *.

Intelligence activities raise special problems and need special attention. In an article in the New York Times magazine (May 21, 1961), Harry Howe Ransom wrote:

> Whatever one's views, the existence of a secret bureaucracy poses special problems in the American system of government. Knowledge is power. Secret knowledge is secret power. A secret apparatus, claiming superior knowledge and operating outside the normal checkreins of American democracy, is a source of invisible government.

Charles Wilson, as Secretary of Defense, described this danger at a press conference in 1957 with these words:

> You see, what I get for my purpose is an agreed-on intelligence estimate. * * * I have to take that, or I would have to bore through an enormous amount of detail myself to try to say that they were wrong or right. * * * I accept what they say. * * *

Hanson Baldwin, as military commentator for the New York Times, wrote in his column of January 15, 1956:

> If war is too important to be left to the generals, it should be clear that intelligence is too important to be left to the unsupervised.

Walter Lippmann, looking at the same problem from a slightly different point of view, wrote soon after the recent change of personnel in the State Department that reform of the CIA should seem easier and more necessary. He said:

> For the CIA should cease to be what it has been much too much, an original source of American foreign policy. That is what has gotten it into trouble, and that is what needs to be cured.

Mr. Allen Dulles once said: "In intelligence you have to take some things on faith." I acknowledge the truth of this, but also acknowledge and insist that faith is no excuse for lack of knowledge, for failure to seek out facts, nor is it to be accepted as a convenient excuse for avoiding responsibility.

If Walter Lippmann, Harry Ransom, Charles Wilson, and Hanson Baldwin are right, Congress must be concerned since it, along with the President, has responsibility for determining foreign policy.

Mr. Chairman, it is said by some that changes that have been made, or will be made, within the administration and within the organization of the CIA itself will so change the role of the head of the CIA that the office will be less significant than it has been in the past. There are some who say that all significant policy decisions relating to the CIA will be made in the White House; others say that the Pentagon will become more important. According to Chalmers M. Roberts, men

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close to the President point out that "there will be so many checks and balances" on his operation "that there is no need to worry."

Mr. Chairman and members of the committee, I think that these are important statements and statements which this committee ought to run down to see what reorganizations are intended and what the effect of such reorganizations or changes and transfers of responsibility may be on the operation of the head of the Central Intelligence Agency.

On the other hand, it has been said that the role of CIA may be expanded and that the CIA will be operated even more secretly in the future than it has been in the past. If this is the case, the committee, it seems to me, should be doubly concerned because certainly the operations of the past have been quite secret.

In any case, as Director of CIA, Mr. McCone will take on great responsibilities and acquire great powers which, at least insofar as Congress is concerned, he can exercixe with little or no supervision. Under the law, he can withhold "titles, salaries, or numbers of personnel employed by the Agency." He can approve the entry into the United States of certain aliens and of their families, subject to concurrence of the Attorney General and the Commissioner of Immigration and Naturalization. He will have authority to expend funds without "regard to the provisions of law and regulations relating to the expenditure of Government funds" on vouchers certified by him alone.

These are unusual powers, and powers which Congress traditionally has not yielded easily. But they are, I think, necessarily granted with reference to the operation of the Central Intelligence Agency.

A part of CIA's work is the preparation of the national intelligence estimates which are used as important guides in the formulation of foreign and defense policy. CIA is an evaluator as well as a collector of facts. This Agency should find and present the facts as they are and interpret them with full objectivity.

The Director of CIA is, under existing practice, Chairman of the U.S. Intelligence Board. The Director has changed the procedure and asks that the Deputy Director of CIA sit as a member of the Board while he presides. Other members of the USIB are General Carroll, representing the Defense Department; the intelligence components of the Army, Navy, and Air Force; representatives of the National Security Agency, the Atomic Energy Commission, the FBI, the Joint Chiefs of Staff, and the State Department.

The head of the CIA briefs the National Security Council at each of its meetings and is always asked to remain for the ensuing discussion. Although the head of CIA is not a member of the NSC, he does remain and participates in the discussions, as a matter of usual practice.

Theoretically, the President—with occasional help from consultants—controls this powerful, huge, and expensive Central Intelligence Agency. But the President is the nominal head of hundreds of agencies; he cannot be kept fully informed at all times of the activities of each of them. Consequently, very great powers are vested in the Director of Central Intelligence. How these powers have been used and how they are likely to be used are most important questions.

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It asks whether the Central Intelligence Agency in the past has carried out activities without constitutional justification or without the authority of statute or of resolution or of treaty commitments. Whether these activities or operations turned out well or badly, whether they in the long run or in the short run advanced or improved the position of the United States, in a sense, is secondary to the basic question of legality or constitutionality of procedure.

The CIA is credited with having helped to oust Mossadegh from the premiership of Iran in 1953. History has not yet clearly demonstrated that this was the wisest policy. But it seems as though it was reasonably good. But the question of both legality and authority of the CIA in this action are open to question.

CIA takes credit for the overthrow of Dr. Arbenz as President of Guatemala in 1954. So far as one can judge, this appears to have been desirable, but, again, it is difficult to establish any justification in law or treaty or even tradition for this action. It is certainly impossible to establish that there was any concurrence on the part of the Congress in this action.

It was not sanctioned by the United Nations or by the Organization of American States, certainly not under the NATO; there was no congressional resolution, and it seems impossible to extend the Monroe Doctrine to cover this action.

The policy decision involved in 1960 in supporting General Phoumi Nosavan's move from Vientiane, helping him equip an army in the south to remove Souvanna Phouma from power rather than join the Cabinet as Vice Premier was, insofar as I know, without any sanction excepting that he, Phoumi Nosavan, had declared himself to be positively on our side and Souvanna Phouma was a declared neutral.

The U–2 flight raises some questions of prudence, but does not raise, in my judgment, questions of legal or constitutional justification as some of the other actions do.

In the case of the invasion of Cuba last year, the basic question of justification would remain even though the invasion had been a success.

Mr. Chairman, the Constitution quite clearly established that the Congress has a part in declaring war. The Senate particularly must be involved in the determination of the nature and aspects of foreign policy. War is seldom declared in the modern world. There are defensive actions and police actions. Nonetheless, the intention of the Constitution still runs to the end that the Congress has a part and responsibility in the decisions to enter upon actions to control or to overthrow the governments of other nations.

Congress has acted to give the President authority through the United Nations. It has granted him wide authority under the NATO treaty and somewhat less clearly under the SEATO treaty. The Congress approved the Middle East resolution in anticipation of the Lebanon action.

I believe that there is need for consultation with Congress by the President or his agent and beyond that of some form of expression of the will of Congress in major decisions relating to war, either hot or cold, when authority is not clearly provided for under existing law or treaty. A Joint Committee of the Congress on Intelligence may not be the best means, or the whole answer, but I know of none better that has been proposed. Consultation with some members selected

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by the executive branch or consultation with members who are on committees somewhat related to the action or field of action does not, in my judgment, satisfy the constitutional test. Men chosen by the Congress itself as its representatives and spokesmen should participate in these decisions, as would be the case in a cabinet system of Government.

I do not expect a Joint Committee on Intelligence to be approved in the very immediate future, nor do I see the possibility of developing an alternative method for supervision of control by the Congress in the immediate future. The choice of the head of CIA is, therefore, of great importance.

The man selected to head the CIA should, I believe, fully understand and appreciate the great powers which are given to him and be aware that, at least in the past, either on its own decision or with executive approval, the CIA has carried on some activities which were of questionable constitutionality. He should realize, too, that in the future he may be called upon or challenged or tempted to conduct similar operations. The Director of CIA should be sensitive to the danger of such proceedings. I hope that this committee will make inquiry as to the awareness and the concern of the current nominee with reference to these basic considerations.

A man selected to be the head of CIA should, if possible, be experienced in intelligence work. He should be a good administrator. He should have an adequate understanding and awareness of the problems of foreign policy, of the difficulties and complexities. He should be concerned as to the ethics of the methods and means by which he, his agents, and operators seek their goals, either in the gathering of information or in carrying on what have come to be called Central Intelligence Agency operations. And, finally, he should be a man who is self-possessed, restrained, and detached.

What are the qualifications of the nominee with reference to these six general areas of qualifications?

I will not attempt a judgment or recommendation with regard to the question of experience in intelligence, as there are no clear standards that can be applied. On the record he has had experience with security methods as Chairman of the AEC and has been involved, or at least consulted, in the intelligence activities related to that Commission.

He has the reputation of being a good administrator. This is a reputation held by many who come into Government. The committee can form its own judgment on this point without comment or advice from me. I have noted, however, that the new Chairman of the AEC has announced some changes in policy and administration. I assume that these are minor changes.

The question of knowledge of foreign policy is one which can be passed upon only in very general terms——

Senator SYMINGTON. If the Senator will yield at that point—What is the pertinence as to whether the changes were major or minor?

Senator MCCARTHY. The point I was making was that the new Chairman of the Atomic Energy Commission has issued a statement about administrative changes which he is bringing about for the purpose of greater efficiency in the administration of the agency.

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It is really in the way of an aside because I have no criticism of the administration of the Atomic Energy Commission by Mr. McCone.

Senator SYMINGTON. Would the Senator from Minnesota yield for another question?

Senator MCCARTHY. Yes, I would be glad to yield.

Senator SYMINGTON. Would the Senator from Minnesota object to any effort of the new Director of the Central Intelligence Agency to make those changes he thinks necessary to improve the efficiency of the Agency, regardless of the past?

Senator MCCARTHY. No, I do not object.

Senator SYMINGTON. I thank the Senator.

Senator MCCARTHY. The question of knowledge of foreign policy is one which can be passed upon only in very general terms and by very subjective standards. I would feel more confident in passing on this appointment if there was a more extensive record of the views of the nominee in the field of foreign policy. He is, according to one columnist, hard-boiled; of molten temper according to the London Economist; a tough man, according to Newsweek; harddriving, according to the Wall Street Journal.

These are not undesirable qualities in the head of any agency and not undesirable, I would say, in the head of the Central Intelligence Agency. They are not, I am sure, the only qualities, or the only good qualities possessed by the nominee being considered, but these have been emphasized.

These are the qualities that have been especially stressed in newspaper comment.

Taken by themselves, they are not enough to qualify a person for this difficult and sensitive office. I might observe that these are essentially the same characteristics attributed to Charles Wilson when he took over as Secretary of Defense some few years ago. I believe they were also attributed to his successor, Mr. McElroy. Assuming that both possessed these characteristics, and acknowledging that such characteristics might better qualify a man to be Secretary of Defense than to be head of the CIA, it must be acknowledged that neither of the two men has been marked by history, at least as of this time, as great and successful Secretaries of Defense.

There are two points in the public record of the nominee which, I think, bear significantly on the question of whether he should be confirmed or not confirmed.

The Director of the CIA should be more interested in finding evidence and passing objective judgment on it than in attempting to polarize opinions or supporting a set position. From the earliest days of the atomic program, as you, the members of this committee, know, there has been a great controversy on the question of weapons control. Much of it is unpublished and hidden from public view.

The controversy roughly has been divided into two positions: On the one side there were those who advocated a more intensive and a more extensive program, sometimes called the big bomb group and advocates of massive retaliation; and on the other side, the supporters of limited weapons, moratoriums, and controlled uses of atomic weapons.

Mr. McCone has been outspoken in his opposition to an unpoliced moratorium on nuclear weapons testing and has publicly issued strong warnings of the danger to the United States if we did not resume testing.

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These are views which are defensible and here held by many. The question I raise is not related to the rightness or the wrongness of this point of view, but rather to the point of whether, as Chairman of the Atomic Energy Commission, Mr. McCone did attempt to influence opinion in support of his position and as to how he undertook to achieve this objective, if he did.

The antimoratorium group was restless and restive during the weapons moratorium. There was information in the press, supposedly gained through leaks from the Atomic Energy Commission, which, in the opinion of some, was harmful to our disarmament negotiations at Geneva.

During the last year of the moratorium, there were a number of printed reports, usually from undisclosed sources, which suggested, though they did not positively say, that the Soviets were conducting clandestine tests. It has been reported that President Eisenhower was so upset over these reports occurring during his administration that he ordered one or more investigations. I assume that if this is true, that the information gathered by the investigations and through them is available to the committee, and it could be used to determine whether there were leaks and what the sources of them were and what bearing they may have had upon policy positions or what bearing they may have upon the question before this committee.

The second incident, if it can be called such, bearing upon this question arose in the course of the 1956 campaign when the Democratic candidate for the Presidency raised the issue of a moratorium on nuclear testing. This proposition could quite properly be made a campaign issue, and it was. But because the proposal was of such great importance, anyone raising it as an issue or discussing it in a campaign had a special responsibility, I think, to present his own views most carefully, and an even greater responsibility not to distort the views of the others.

Eventually, 10 professors at the California Institute of Technology entered the controversy in support of a moratorium. They published a letter, signed it, and identified themselves as members of the faculty of the institute, although they stated quite clearly that they were not speaking for the institute. I submit for the record the names of these 10 professors, a number of whom have been active in the Oakridge plutonium and other atomic energy research during the war.

And I would like to submit for the record a copy of their statement, as well as a copy of a letter which Mr. McCone sent to them when this controversy arose.

(The documents referred to are as follows:)

STATEMENT OF 10 SCIENTISTS ON ATOMIC TESTING PUBLISHED IN LOS ANGELES TIMES, OCTOBER 15, 1956

For some time Gov. Adlai Stevenson has urged that the United States take the lead and renounce further H-bomb tests for as long a time as other nations likewise refrain from testing these devices. This suggestion has been attacked as advocating a dangerous unilateral action which would permit the Russians to get ahead of the United States in nuclear technology. In our opinion these criticisms have little validity and give inadequate attention to the reasoning that lies behind the proposal or to the urgency of dealing immediately and effectively with the peril that confronts the world as a result of the existence of the H-bomb.

Today we are caught in a nuclear armaments race that threatens to engulf the world. No end of this race is yet in sight. Two nations have already exploded hydrogen devices, a third will do so in a few months. Within a short time it is

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likely that many countries large and small will possess this capability. With the commitment of more and more national arsenals to this type of warfare, international control becomes increasingly difficult. Even in our own country our Military Establishment is becoming more and more dependent upon nuclear weaponry and the time will soon be upon us when even a limited military action must inevitably drive us into nuclear war.

Time is running out, with an implacability that we ignore at our peril. Yet after 10 years of negotiation, the world has no other guarantee of survival than the tenuous hope that no nation will pull the trigger for fear of committing national suicide.

It appears to us that Mr. Stevenson's proposal might be a useful way to get the negotiations out of the deadlock stage by taking a step which would not endanger our security, which would in no way hinder other areas of nuclear research, which could not be delayed indefinitely by negotiations and which would have a very real significance to most nations throughout the world. At the very least the proposal is one that should be widely debated and discussed for the obvious reason that the control of nuclear weapons is vital to our survival.

Additional advantages of such a step would be:

(1) It would decrease our exposure to radioactive fallout and its associated dangers.

(2) It might postpone the time when there will be many nations which possess practical H-bomb experience.

(3) It would increase our prestige in Western Europe and in Asia.

(4) It would provide an important test of Soviet intentions. We must remember that on July 17 Soviet Foreign Minister Shepilov stated that the Russians would be willing to ban H-bomb tests if others agreed.

President Eisenhower has stated that he regrets that the American Government's policy with respect to the testing of large-scale nuclear weapons has been made an issue in this campaign. On the contrary we find it regrettable that discussions of our military strength, of our vulnerability, and of our foreign policy in relation to H-bombs have thus far represented such a small proportion of current political discussions. We must realize that time is running out—that our actions and inactions during the next 4 years may well determine whether our people, our Nation, our civilization live or die.

Our people must not be shielded by their Government from the grim realities that confront us. They must realize how destructive H-bomb explosions really can be. They must realize how easily these devices can be made by other nations. They must realize in full the dangers of radioactive fallout. They must appreciate our vulnerability to ordinary air attack with atomic bombs, let alone to the approaching intercontinental missiles. They must realize all of these things if these problems are to be solved in time.

We believe that the free and open discussion of proposals such as that which has been raised by Mr. Stevenson are essential if we are to extricate ourselves from the vicious circle in which we now find ourselves.

Signers: Dr. Thomas Lauritsen, professor of physics, California Institute of Technology; Dr. Matthew Sands, associate professor of physics, California Institute of Technology; Carl D. Anderson, professor of physics, Nobel Laureate in Physics 1934, member of the National Academy of Sciences; Harrison Brown, professor of geochemistry, member of the National Academy of Sciences, formerly assistant director of chemistry, plutonium project, Oak Ridge, Tenn.; Robert F. McChristy, professor of theoretical physics, formerly physicist, Los Alamos, N. Mex.; Jesse W. M. DuMonde, professor of physics, member of the National Academy of Sciences, during war physicist with OSRD, Air Force, and Navy; Robert V. Langmuir, associate professor of electrical engineering, major field high energy accelerators, physicist with OSRD during war; Charles R. McKinney, senior research fellow in geochemistry, CTT, physicist at Oak Ridge during war, formerly chief engineer of 100 mev betatron at University of Chicago; John M. Teem, research fellow in physics; Robert L. Walker, associate professor of physics, formerly physicist, Los Alamos.

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OCTOBER 15, 1956.

DR. THOMAS LAURITSEN,
California Institute of Technology,
Pasadena, Calif.

DEAR DR. LAURITSEN: This morning I read with amazement your statement. It seemed to me the arguments you use concerning renouncing the H-bomb tests are without validity. Indeed, your arguments completely support the position of President Eisenhower and his administration that experimentation and tests must continue until a system of international control is developed.

You mention Foreign Minister Shepilov's statements of July 17, suggesting abandoning of bomb tests; but what you fail to mention is that on almost the day Mr. Shepilov made the statement the Russians were conducting nuclear tests in the interior of Siberia.

You, Dr. Lauritsen, and your associates know the leadtime required to conduct a test. You know that almost a year must transpire from the time the test is decided upon until it is made. This year is consumed in planning, assembling material and construction and, finally, in the transportation of the device to be tested. Now, if we make a unilateral decision of a type you and your associates advocate and then Mr. Shepilov does as he did last July—turns around and sets off a few hydrogen bombs in their own testing ground—where do we stand? The answer is simple. We have lost a year; we are behind in the race; all of the dangers which you enumerate in your press release have been multiplied; valuable time has been lost; a reckless decision has been taken and the security of America placed in jeopardy because of it.

You point out that we are caught in a nuclear armament race, that time is running out and that nothing is being done to arrest the competition in this field between nations. You know that President Eisenhower went to Geneva in an effort to solve the disarmament question. You know that Secretary Dulles has met repeatedly with the foreign ministers of other countries, including Russia, in attempting to find a reasonable answer to the disarmament problem. You know that the United Nations has had its committees on disarmament in almost continuous session during recent years. You know that President Eisenhower placed Mr. Stassen in his Cabinet and assigned him exclusively to the task of finding an answer to the disarmament riddle. You know that 81 nations are now meeting in New York furthering our President's atoms-for-peace program. You know of these actions but still you state that time is running out and infer nothing is being done. How do you reconcile your position with the facts as I have outlined them?

Your statement is obviously designed to create fear in the minds of the uninformed that radioactive fallout from H-bomb tests endangers life. However, as you know, the National Academy of Sciences has issued a report this year completely discounting such danger. Also you know from your close contact with the tests that one of the important objects of them is to develop techniques for reducing fallout. The tests are to be applauded rather than criticized on this particular ground.

Your proposition that postponement of tests will delay the time when other nations might possess practical H-bomb experience seems to have no foundation. In fact, it is an argument that has for several years been a prominent part of Soviet propaganda, and you apparently have been taken in by this propaganda. No nation, friendly or unfriendly, has so much as hinted that our tests are stimulating their work or, on the contrary, that a unilateral decision on our part to abandon tests would cause them to decrease their emphasis on bomb development.

As far as our prestige in Western Europe is concerned, I have spent much more time in Europe during the past 2 years than you have and have been in touch with the civilian or military officials of practically all Western Europe governments, and I can tell you from personal knowledge that our conduct of tests, H-bomb or other nuclear devices, is not at issue with our prestige in Western Europe.

You infer that our Government shields our people from the realities of the dangers which confront us. This impression is false. President Eisenhower has repeatedly warned us of these dangers. Secretary of the Air Force Quarles dealt with the question at length in addressing the World Affairs Council in Los Angeles on last Wednesday. Secretary Wilson dealt with it last night on TV. Secretary Dulles has discussed the danger time and time again. Mr. Peterson of the Office of Civilian Defense has criss-crossed the country for 4 years warning of the very dangers of which you speak. Vice President Nixon has discussed the

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subject in Los Angeles and elsewhere in the United States on many occasions. The country has been advised time and time again that others have developed the H-bomb and the A-bomb, that they are building up stockpiles, that they have aircraft to deliver them. Our people have been repeatedly warned of the dangers not shielded from the facts as you infer.

Surely the unilateral abandoning of the very tests which are an essential part of any development of this type does not improve the very situation that seems to worry you. On the contrary, it gives the advantage to our adversary and greatly increases rather than decreases the danger of America and the security of our people.

A unilateral decision of the type you recommend might be fatal to our country. It might easily lose for us the precious technical advantage we now hold. Think of the desperate circumstance we would find ourselves in today had we followed the advice of one scientist, Dr. Robert Oppenheimer, a few years ago and abandoned the development of the H-bomb. Democrats and Republicans alike at that time saw the folly of such thinking. I am sure the more thoughtful members of both parties will see the extreme hazards to our national security in the course you recommend and advocate.

I stand steadfastly behind a policy of disarmament when we reach agreement with other nations for a safe and proper procedure of inspection so that we Americans will be sure that, as we take our guard down through agreement with Russia, we will have no defense. This President Eisenhower has advocated time and again. It continues to be his policy; and you, unfortunately, have completely distorted his position in your press release.

Yours very truly,

JOHN A. McCONE.

Senator McCARTHY. This same question was raised during the hearings held by the Joint Committee on Atomic Energy preliminary to the confirmation of Mr. McCone as a member of the Atomic Energy Commission in 1958. In my opinion, the inquiry was not as thorough as it might have been, or at least the published reports of the inquiry were somewhat short of satisfactory.

It may be that the committee judged that this issue was not so important with reference to the appointment then being considered.

Following the issuance of the statement by the scientists, Mr. McCone wrote a letter dated October 15, 1956, to Dr. Thomas Lauritsen of the California Institute of Technology, which included the following statement:

> Your statement is obviously designed to create fear in the minds of the uninformed that radioactive fallout from H-bomb tests endangers life. However, as you know, the National Academy of Sciences has issued a report this year completely discounting such danger.

Mr. McCone's letter makes reference to "a unilateral decision of the type you recommend might be fatal to our country," and also states with reference to the position of the scientists: "You apparently have been taken in by this propaganda." "This" refers to an earlier use of the word "Soviet" propaganda.

I do not know whether the scientists were taken in by Soviet propaganda or not. In my opinion, one should be extremely certain that such was the case before suggesting it in a letter. Mr. McCone's judgment that this was "designed to create fear" was a wholly subjective judgment which would be valid only if the author could read the minds of the authors of the first letter. In their letter the 10 scientists clearly did not advocate "unilateral" moratorium on testing. And this point was made clear in the hearings of the Joint Committee on Atomic Energy. And, finally, his interpretation of the position of the National Academy of Sciences position with regard to fallout is one which has been interpreted quite differently by others.

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The report was generally interpreted as minimizing the danger from fallout. The New York Times story of June 13, 1956, however, headed "Scientists Term Radiation a Peril to Future of Man," interpreted the report quite differently. Their story contained this statement:

> A committee of outstanding scientists reported today that atomic radiation, no matter how small the dose, harms not only the person receiving it but also all his descendants.

It has been reported that in addition to writing the letter, Mr. McCone, a trustee of Caltech, demanded that the 10 scientists be fired.

Senator SYMINGTON. Will the Senator yield at that point?

Senator MCCARTHY. Yes.

Senator SYMINGTON. Does he know that is correct?

Senator MCCARTHY. No; I do not know that it is correct. I assume that this committee could determine whether or not it is true. I have conducted no——

Senator SYMINGTON. Has he asked Mr. McCone whether it is correct or not?

Senator MCCARTHY. I have talked to Mr. McCone about it, and I have read the hearings that were held before the Joint Committee on Atomic Energy, in which essentially the same question was raised, and the response of Mr. McCone was that none had been fired as a result.

But he did not say that he had not made the request.

Senator SYMINGTON. Did the Senator from Minnesota ask Mr. McCone whether he had made the request?

Senator MCCARTHY. I raised the question and in the language that I have stated to the Senator from Missouri, and I assume that if he wishes to make a positive statement on it, he would have responded at that point.

Senator SYMINGTON. Did he imply that he had done it?

Senator MCCARTHY. I would not say that he implied one way or the other.

Senator SYMINGTON. But you asked him the question and he was evasive in his reply?

Senator MCCARTHY. I did not say "he was evasive." I say that I raised the subject and I could not say that he responded, and I am sure that he knew of my concern.

Senator SYMINGTON. Would the Senator state for the record what he asked the nominee?

Senator MCCARTHY. Well, the nominee and I discussed this general question of the scientists and the controversy between him and the scientists, and he suggested to me, and had sent up to me, marked hearings of the hearings which were held before the Joint Committee on Atomic Energy.

Senator SYMINGTON. I am sure that my able friend from Minnesota would not want to leave the impression that he had asked Mr. McCone as to whether or not he had demanded the resignation of these scientists for taking this political position?

Senator MCCARTHY. No.

Senator SYMINGTON. But that Mr. McCone had refused to reply?

Senator MCCARTHY. I do not think I have implied that. I suggest in my statement that this is a proper question for this committee to

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raise, if it wishes, or to inquire into in private. There has been no private investigation.

Senator SYMINGTON. I thank the Senator for his courtesy in yielding.

Senator SMITH. Mr. Chairman?

Chairman RUSSELL. Senator Smith.

Senator SMITH. Mr. Chairman, I would like to suggest or request that Mr. McCone at the conclusion of the prepared statement be permitted to reply to Senator McCarthy's questions before the committee starts its questioning.

Chairman RUSSELL. The gentleman is permitted to do that by unanimous consent, but, as a general rule, questions that are propounded to witnesses before this committee by Senators other than members of this committee are submitted in writing to some member who propounds them.

We do not permit the examination of any witness before this committee by Senators who are not members of the committee. We do not deny them the information. We give them an opportunity to submit their questions to some member of the committee, but I imagine that Mr. McCone will feel disposed to deal with these matters.

We can call on him when Senator McCarthy has concluded his statement.

Senator SMITH. Mr. Chairman, what I was trying to indicate was that Mr. McCone would have an opportunity to answer or reply to the Senator before we start questioning.

Chairman RUSSELL. Mr. McCone can reply to any one of these questions or any charges that have been made, even to the observations made by these persons who have been named by Senator McCarthy as involved in some aspect or another of the work of the Central Intelligence Agency.

Mr. McCone will be permitted the very widest scope in replying. We are not going to cut him off. This is a nomination for a position that is of vital importance to the security of this country, and it would be very inappropriate for the nominee not to make expression of his views or to anwer any charges being made against him that he might desire to make, or any member of this committee may propound, or any Senator may desire to propound.

(See app. I.)

Senator SYMINGTON. Mr. Chairman, in support of the suggestion of the able Senator from Maine, I would ask unanimous consent, inasmuch as I have never seen this statement, and it is a long statement, that the statement being read by the distinguished Senator from Minnesota be copied and sent to every member of the committee, and that it be sent to Mr. McCone, and that he reply to it at his convenience for the record.

Chairman RUSSELL. We will be glad to do that. I imagine Senator McCarthy will furnish sufficient copies and furnish it to all members of the committee.

We want to get into every fact that has any connection, even a remote connection, with the qualifications of Mr. McCone to discharge the duties of this office. And if we get into an area where we deal with matters that might be determined classified and it is best not to discuss them in a manner in which information might be carried to a country that would destroy us, we will go into executive session.

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We are not going to rush this hearing.

We are going to give Mr. McCone every opportunity to discuss any facet of this matter, and every member of this committee will have every opportunity to propound any questions they may desire of Mr. McCone.

Some of them may have to be propounded in executive session, but they will have an opportunity to do that.

Senator SMITH. Mr. Chairman, I shall not ask for a unanimous consent agreement, but I would hope very much that the chairman and the committee would give consideration to giving Mr. McCone the chance to reply to the statement being made by the distinguished Senator from Minnesota before the members of this committee start their questioning. (See app. I.)

Chairman RUSSELL. Well, if Mr. McCone desires to do that. I do not think we will require him to try to remember all of these questions and to answer them. There are a large number of issues raised here.

I have been listening as attentively as I can, but I would not undertake to discuss every issue raised by the distinguished Senator from Minnesota without having a copy of the statement before me.

We are not going to cut Mr. McCone off now. He will be permitted to reply to anything he wishes to in his statement. He is an intelligent man. He has had experience with Government. If it gets into an area that he thinks is classified, he can tell this committee. We are not going to rush Mr. McCone.

If he wants to come back this afternoon, if any members of the committee wish him back this afternoon, I am sure that Mr. McCone will be glad to accommodate the request of the committee to return.

If we do not conclude this afternoon, we will proceed tomorrow afternoon. We cannot tomorrow morning because we have another hearing arranged. But we shall not rush this matter to a conclusion, and we are not going to cut Mr. McCone off from making any statement he sees fit to this committee.

Senator CASE. Mr. Chairman, along this same line of giving the members of the committee adequate information for basing their questions, may I ask: Has Mr. McCone submitted to the committee a statement showing his holdings of interest in various companies?

Chairman RUSSELL. I understand we have not yet received a financial statement from Mr. McCone.

Senator CASE. Mr. Chairman, in connection with the confirmation of officers for the Department of Defense, this committee has always requested and received a statement in detail on that point.

Chairman RUSSELL. This is not the Department of Defense.

Senator CASE. I recognize that.

Chairman RUSSELL. That has been done because of the extensive procurement responsibilities of nominees for the Department of Defense.

If any Senator wishes to raise the question whether Mr. McCone has financial holdings that might influence him in his evaluation of the information, we will have an opportunity to raise that question, too. I would remind the Senator that the conflict-of-interest requirements that this committee imposes on nominees in the Department of Defense grows out of the magnitude of procurement there and which does not occur in the same degree in the Central Intelligence Agency.

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If the committee wishes to apply it to any nominee in the Central Intelligence Agency, we will have an opportunity to decide that question.

Senator CASE. Mr. Chairman, no one has stated more succinctly than the chairman the importance of the position for which Mr. McCone is the nominee, and it would seem to me that if it is in the interest of good government or in the interest of the security of the national defense that we go into these matters in connection with Secretaries and Assistant Secretaries of Departments, we certainly could do no less in the matter of the Director of the Central Intelligence Agency.

Chairman RUSSELL. The committee will have an opportunity to decide that.

I said that, in my opinion, this position in many respects is second in importance only to the President. I know of no statute requiring the President of the United States to submit any statement of his holdings——

Senator CASE. That may be true.

Chairman RUSSELL. And whether he holds any stocks with any corporation that might do business with the Government.

Now, this committee will have an opportunity to discuss that before we take final action on this nomination. We may wish to apply that rule here. It never has been applied in the past to the Central Intelligence Agency.

Senator CASE. May I just say this: In comparing it with the Presidency, any candidate for the President goes through months and months of grueling cross-examination by the processes by which a President is nominated and selected, and the public has an opportunity to pass a judgment on that.

This is here the only testing ground, so to speak, for the qualifications for the Director of the Central Intelligence Agency, and in view of the fact, as has already been pointed out, that the operations of the CIA do not get the normal review that many departments get by congressional committees, it seems to me that at this time, and in this proceeding, we should have the information that would enable the committee to make a proper and sound judgment on this matter.

Many of the questions which I intend to ask are related to the possible conflict of interest or the holdings that the nominee has, and it would save considerable time if we had that statement in advance of his holdings so that all members of the committee might have an opportunity to consider it and direct any questions that might occur to them growing out of that information.

Chairman RUSSELL. Of course, the Senator well knows that he has the right to ask any questions he desires to propound, whether it is relevant or irrelevant.

I believe in the fullest discussion by Members of the Senate and in committees and would be the last to restrain. The conflict of interest requirement is built on the concept of procurement, and whether there is conflict of interest when a man is entering into contract for purchasing or expending public funds for procurement of materials.

Now, the committee will have an opportunity to decide in executive session whether we wish to apply that rule to the Director of the Central Intelligence Agency.

Senator CASE. I am not suggesting that. I am suggesting that I, as one member of the committee, would like to have that information

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as a basis for questioning and relating it to other questions which I have in mind to ask.

Chairman RUSSELL. Very well.

Senator SYMINGTON. Mr. Chairman?

Chairman RUSSELL. Yes?

Senator SYMINGTON. As long as the Senator from South Dakota brings this up, I would like, as I have many times in years past, to present my position.

Until the Senate itself decides that it would like to know what stocks were bought and sold by Senators, and what their income is, until we in this body make a full disclosure of our own financial activities, I am not as interested in this as I would otherwise be.

Chairman RUSSELL. I do not wish to interrupt this discussion, but we have a witness. We would like to proceed with Senator McCarthy, if we can.

Senator CASE. I was merely going to say a candidate for the Senate, the same as a candidate for the Presidency, is subjected to considerable cross-questioning during his campaign for nomination or for election.

With respect to the point which the chairman made as to the conflict of interest being a matter of procurement, it is my belief that the Director of the Central Intelligence Agency, by the emphasis which he can give to the operations of Central Intelligence, either overt or covert operations, could either protect or neglect various interests of companies in which he might have an interest, and might color his own judgment as to where the objective interest of the United States rests.

Chairman RUSSELL. We are very glad to get the opinion of both distinguished Senators. You may proceed, Senator McCarthy.

Senator MCCARTHY. Mr. Chairman, if I may comment on the point that was raised at the time I yielded the floor, I, of course, am certain that this committee will give the nominee adequate time to prepare and answer any questions to the committee that I have raised that the committee thinks is worthy of that kind of attention.

I have discussed, I think, every major point in my paper with Mr. McCone or with those whom he asked me to consult with. I hope I have not raised any new question or new issue in my paper here today.

If I could repeat, the question of the scientists is, in my judgment, a most important one. If I searched out the facts and had them completely sure, I might have raised them in a somewhat different way, but I could not do so.

And, because I think it is so important and because I think there is at least a lack of clarity with regard to this whole incident, I do think the committee should inquire into it.

Members of the academic profession should not face the threat of firing for expression of opinion, particularly under the conditions in which I believe these scientists expressed their point of view in the year 1956; nor should they be threatened with dismissal on the grounds that they have identified themselves with a university or an institute of which they were a part.

I can recall to the committee that in medieval time there was a kind of institution called the studium including scholars, the people who were supposed to give thought to the problems of their own time, and they were given a special political immunity and protection so that they might speak quite freely. And, in my opinion, any threat to the expression of opinion by academic people in our own time is most dangerous.

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The most recent comment on this incident——

Senator BUSH. Will the Senator yield for a question?

Senator MCCARTHY. Yes.

Senator BUSH. Does the Senator see in any of this business about Mr. McCone any threat to academic freedom?

Senator MCCARTHY. Well, certainly, if as a trustee of the California Institute of Technology he undertook or suggested to the board that they fire these people because they expressed themselves with regard to nuclear fallout and the moratorium, I would think that this was an unwarranted intervention.

Senator BUSH. Did he do that?

Senator MCCARTHY. This is the question that has been raised. I do not say that he has or not, but I think this committee can find out exactly what the facts are.

Senator BUSH. As the Senator is raising the question, it seems to me that he is the one who should have found it out.

Senator MCCARTHY. If you will give me the investigators and the authority, I will do it. But I think this committee this issue has been raised by another committee of the Congress. It has not been satisfactorily answered. So far as I know, if this committee feels it has been, on the basis of what I have had to say, on what the record shows, why, well and good. You can recommend this nominee for confirmation by the Senate. Or if you think that the question itself is not important.

But I do think that at least if enough of you concur in my judgment that this issue is still somewhat unclear, that the committee ought to try to find out what the facts are, and I think that the committee can find out what the facts are.

Mr. Chairman, it is within this general framework of the functions of the CIA, with consideration to the methods and procedures of that Agency, and also with consideration of the character and qualifications of the nominee, that this committee must make its decision and recommendations.

There are, I think, these basic questions to which your committee should seek answers.

1. Is the CIA to be reorganized and, if so, in what respects?

2. What bearing would such changes have upon the duties of the head of the CIA and upon the operation of that Agency? And possibly also its relation to Congress.

3. What are the views of the nominee as to the authority for some of the actions attributed to the Central Intelligence Agency in the field of foreign affairs within recent years?

4. What is the nominee's judgment as to methods which can be justifiably used by the Central Intelligence Agency?

5. What was the extent of the nominee's involvement, if any, in what has been described or reported as "leaks" from the Atomic Energy Commission with reference to the moratorium on nuclear testing?

6. What are the facts with regard to the charge of the nominee's attempt to have the scientists fired at the California Institute of Technology?

Mr. Chairman, I thank you and your committee for the courtesy of this hearing today.

Chairman RUSSELL. We are happy to have had you with us, Senator. We are all interested in your expression as to the Central Intelli-

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gence Agency. Even if Mr. McCone's nomination is approved, we are interested in your analysis of this office.

Now, Mr. McCone, you may make such statements to this committee as you desire to make.

Senator SYMINGTON. Mr. Chairman, may I ask is there a printed copy of this statement available?

Chairman RUSSELL. I cannot answer that question. I do not know.

Senator SYMINGTON. Does the Senator know?

Senator MCCARTHY. I have submitted copies, but this is somewhat modified as to my remarks, but very slightly. I will be glad to leave this.

Senator SYMINGTON. Would the Senator be willing to have the mimeographed copy given to the committee so that the committee can question the witness, if it is desired, in accordance with the mimeographed copy?

Senator MCCARTHY. I think the mimeographed copy is sufficiently accurate to be used for that purpose.

Chairman RUSSELL. We have a rule as a general proposition that requires the submission of a statement to the committee, but we have never applied that rule to Members of the Senate.

Senator SYMINGTON. Mr. Chairman, I would like to look over what was said with reference to the witness testifying because my mind could not carry all those many details in my head.

Chairman RUSSELL. The Senator's entire statement is now in the possession of the committee, not only the multigraphed statement, but his entire statement, and it will be available to any member of the committee.

The Senator says that this is not the complete statement, but it contains most of the matters.

Senator MCCARTHY. As far as the facts are concerned, it is accurate, with some grammatical changes and slight modifications.

Chairman RUSSELL. Before we proceed any further, we will distribute this statement. I did not know it was here. I am advised that there are not enough to furnish to every member of the committee.

The Chair will make his available to members.

Senator SALTONSTALL. Mr. Chairman, this is headed, Senator McCarthy, as your testimony. Now, is this your testimony?

Senator MCCARTHY. Yes, this is essentially the text of that.

Senator SALTONSTALL. Thank you very much.

Senator MCCARTHY. I acknowledge this as the statement.

Chairman RUSSELL. Let us have order here where all the members of the committee can hear Mr. McCone.

Are you ready to proceed now, Mr. McCone?

STATEMENT OF JOHN A. McCONE, NOMINEE, TO BE DIRECTOR OF CENTRAL INTELLIGENCE

Mr. MCCONE. Yes.

Thank you, Mr. Chairman, for permission to make this statement to the committee.

There was circulated to the committee a day or two ago a biographical sketch and I would just like to brief it. I was born in San Francisco on the 4th of January 1902, and I have lived in California all of my life since then, with the exception of the time I have spent in Washington or elsewhere.

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I graduated from the University of California in engineering and have pursued engineering or related work since that time.

Following graduation, I became interested in the steel business, in the fabricating and construction end, and during the period of 15 years was actively engaged with the Llewellyn Iron Works and then the Consolidated Steel Corp., which was its successor.

In 1937, I resigned as a director and executive vice president of that company to form with my associate, Mr. Stephen D. Bechtel, the Bechtel-McCone Corp. This company engaged in engineering and construction on a worldwide basis; and during the war was very actively engaged with others in various enterprises of engineering, construction, shipbuilding, aircraft modification, and so forth.

During the war I built—as president of the California Shipbuilding Corp., I organized and built the California shipyards at Terminal Island, which became the second largest emergency yard of the U.S. Maritime Commission, producing some 475 vessels of various types.

I might recall that the experience at that yard, which involved the recruiting and training and organizing of some 45,000, turned out to be one of the most successful efforts in this field.

Concurrently, at the request of the Army, the Bechtel-McCone Corp., of which I was the president, built a very large aircraft modification center at Birmingham, Ala., and there we equipped B–24 and B–29 aircraft for their special missions under directives from the Air Materiel Command of the Air Force.

During the war, in addition, we started at the request of the Maritime Commission certain shipping operations, and those have grown since the war into what I might say is my principal personal business activity at the present time. My principal business is the Joshua Hendy Corp., a shipping company wholly owned by me, which engages in both intercoastal and coastwise shipping, as well as offshore shipping, in the transportation of bulk cargoes such as iron ore and petroleum products.

I have, as this committee knows, had considerable experience in Washington.

In 1947, I was appointed by President Truman to the President's Air Policy Commission, which produced the report "Survival in the Air Age," which for several years became more or less of the directive for the building up of our airpower, and I am sure this committee is familiar with that report.

In 1948, I served as special deputy to Secretary James Forrestal. At that time there was no position of Deputy or Under Secretary of Defense, and I served in what might be considered that capacity for about a year's time. It was my responsibility then, under his direction, to prepare the first consolidated budget of the Department of Defense.

In May of 1950, I was appointed Under Secretary of the Air Force and served until October 1951.

In 1954, I was a member of Secretary Dulles' Public Committee on Personnel, which engaged in a study of the personnel problems of the State Department and caused the reorganization of the Foreign Service and other aspects of the State Department activities.

In July 1958, I was made a member of the Atomic Energy Commission and immediately appointed its Chairman and served until January 20, 1961.

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I have been active in a number of educational and philanthropic and civic activities.

At the time of my appointment as Director of Central Intelligence, I was chairman and director of Joshua Hendy Corp. and Panama Pacific Tankers Co., and a number of their subsidiaries.

I was a director and a member of the executive committee of the Pacific Mutual Life Insurance Co.; a director of the Western Banking Corp., the First Western Bank of California, Trans-World Airlines, and the Standard Oil of California.

I resigned from all of those directorships and officerships.

(The nomination reference and biographical statement referred to follow:)

NOMINATION REFERENCE AND REPORT

IN EXECUTIVE SESSION,
SENATE OF THE UNITED STATES,
January 15, 1962.

Ordered, That the following nomination be referred to the Committee on Armed Services:

The following-named person, who was appointed during the last recess of the Senate, to the office indicated:

John A. McCone, of California, to be Director of Central Intelligence, vice Allen Welsh Dulles, resigned.

JOHN ALEX McCONE

John Alex McCone was born in San Francisco on January 4, 1902. His father's family had been in the mining and machinery business in Nevada and California since 1860. His mother was the former Margaret Enright, of San Jose, Calif. He attended the public schools in Los Angeles, and the University of California at Berkeley, and was graduated in 1922 with the B.S. degree in engineering, magna cum laude. Mr. McCone and Miss Rosemary Cooper, of Nez Perce, Idaho, were married on June 21, 1938. They maintained homes in San Marino, Calif., and in Washington, D.C., until her sudden death on December 6, 1961.

Mr. McCone began his industrial career in 1922 as a riveter in the boiler shop of the Llewellyn Iron Works in Los Angeles. In subsequent years with that firm he worked as surveyor with its construction gangs and foreman of its steel erector crews, and at the age of 26 he became construction manager. In 1929, when the Llewellyn firm was merged with others into the Consolidated Steel Corp., he joined the new firm and served successively in various executive positions, including construction manager, vice president in charge of sales, and (from 1933 on) executive vice president and director. Among his major projects at Consolidated was one to provide steelwork for the Boulder Dam, being built for the U.S. Bureau of Reclamation by the "Six Companies" consortium.

In 1937 Mr. McCone left the steel business to join Stephen D. Bechtel in organizing a new engineering firm, the Bechtel-McCone-Parsons Corp., in Los Angeles. This firm, later renamed the Bechtel-McCone Corp., specialized in the design and construction of petroleum refineries, processing plants, and power-plants for installation throughout the United States, in South America, and in the Persian Gulf area. Late in 1939, at the outbreak of war in Europe, with various business associates, Mr. McCone joined the Six Companies group in forming the Seattle-Tacoma Shipbuilding Corp. They built merchant ships, first for the U.S. Maritime Commission and later for the British Government.

In the Nation's war production effort during World War II Mr. McCone and his enterprises participated extensively. He assisted in the establishment of the California Shipbuilding Corp. and served as its president and the general manager of its Terminal Island shipyard at Los Angeles. It became one of the Nation's principal wartime shipyards for the construction of cargo vessels, tankers, and troop transports. Through the Bechtel-McCone Corp. he built and managed the Air Force's modification center in Birmingham, Ala., where B–24 and B–29 bomber aircraft were specially fitted for combat. Through an affiliate, Pacific Tankers, Inc., and in cooperation with the Standard Oil Co. of California, he operated an extensive fleet of oil tankers for the U.S. Navy in the Pacific. He also served as director of the Marinship Corp., at Sausalito, Calif., and of the Oregon Shipbuilding Corp.

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After the war, under Mr. McCone's leadership, the Bechtel-McCone Corp. took over the Joshua Hendy Iron Works at Sunnyvale, Calif., producers of heavy machinery and equipment such as ship propulsion units, reduction gears, and reclamation equipment. Subsequently, under Mr. McCone's presidency, the Hendy firm (eventually renamed the Joshua Hendy Corp.) redirected its efforts to oversea shipping, particularly the ore-carrying trade in South America and, through its Pacific Tankers Division, the operation of a fleet of oil tankers in the Pacific. In another venture, in 1945, Mr. McCone and his associates formed the Pacific Far East Line for cargo trade with Japan, the Philippines, and China.

Mr. McCone has also served on the boards of other enterprises, including the following: Curtiss-Wright Corp.; Crocker-Wheeler Electrical Manufacturing Co.; California Bank of Los Angeles; Pacific Mutual Life Insurance Co.; Industrial Indemnity Co.; Standard Oil Co. of California; Western Banking Corp.; Founders Fire & Marine Insurance Co.; and Trans World Airlines.

Mr. McCone's official service with the U.S. Government dates from the fall of 1947, when he was appointed by President Truman as a member of the President's Air Policy Commission, of which Thomas K. Finletter was Chairman. In that position Mr. McCone helped to formulate the military-preparedness aspects of the Commission's report, "Survival in the Air Age," issued on January 1, 1948. From March to November 1948 he served as Special Deputy to Secretary of Defense James V. Forrestal, and handled the preparation of the first two budgets of the newly established Department of Defense. In May 1950 he was appointed Under Secretary of the Air Force, with special responsibilities for the aircraft procurement program and the construction of oversea bases, including the planning of the base complexes at Thule, Greenland, and in north Africa. Upon his resignation in October 1951 to return to private life, Mr. McCone was presented the Exceptional Civilian Service Award, which cited him for his part in the doubling of American military aircraft production during that critical year of the Korean war.

During President Eisenhower's administration Mr. McCone served in a number of capacities. In 1954 he was a member of Secretary of State Dulles' Public Committee on Personnel (the Wriston Committee), which was concerned with increasing the effectiveness of the career services of the Department of State, both in Washington and abroad. On June 6, 1958, President Eisenhower nominated him for a 5-year term as a member of the U.S. Atomic Energy Commission. The nomination was approved by the U.S. Senate on July 9, and on July 14, 1958, he took office and was designated as Chairman of the Commission. He served until the close of President Eisenhower's administration in January 1961, when he resigned to return to private life.

Mr. McCone has participated in a number of civic, philanthropic, and educational activities over the years. He has been a director of the Stanford Research Institute, a trustee of the California Institute of Technology, a regent of the Loyola University (Los Angeles), and was one of the founders and first president of the Los Angeles World Affairs Council, established in 1954. In 1955 Pope Pius XII made Mr. McCone a Knight of St. Gregory, and in 1956 awarded him the Grand Cross of the Order of St. Sylvester. In March 1956 Mr. McCone served as President Eisenhower's personal representative to the Vatican at the Pope's 80th birthday celebration, and in 1958, with Secretary of State Dulles and Mrs. Clare Boothe Luce, represented the President at the funeral of Pope Pius XII.

Mr. McCone holds honorary degrees from many universities including the University of California, Notre Dame University, Fordham University, Clarkson College of Technology, and the Catholic University of America.

Mr. McCone entered on duty as Director of Central Intelligence under a recess appointment on November 29, 1961.

Mr. McCONE. Mr. Chairman, I know that the committee will be interested in the particular assignment that I have accepted from the President, and, for the record, the President asked me to assume the post of Director of Central Intelligence on, I think, the 27th of September, and I was actually inducted into office on the 29th of November.

During the intervening 2-month period I traveled extensively in examining the affairs of the Agency, took a trip both to the Far East and to a great many points in Europe. I think I could best explain the scope of the responsibilities which the President has asked me to

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assume by reading for the record a letter of January 16, signed by President John F. Kennedy. The letter is as follows. It is directed to the Director of the Central Intelligence Agency, with copies to the Secretary of State, Secretary of Defense, the Attorney General, and to the Chairman of the Atomic Energy Commission.

In carrying out your newly assigned duties as Director of Central Intelligence it is my wish that you serve as the Government's principal foreign intelligence officer, and as such that you undertake, as an integral part of your responsibility, the coordination and effective guidance of the total U.S. foreign intelligence effort. As the Government's principal intelligence officer, you will assure the proper coordination, correlation, and evaluation of intelligence from all sources and its prompt dissemination to me and to other recipients as appropriate. In fulfillment of these tasks I shall expect you to work closely with the heads of all departments and agencies having responsibilities in the foreign intelligence field.

In coordinating and guiding the total intelligence effort, you will serve as Chairman of the U.S. Intelligence Board, with a view to assuring the efficient and effective operation of the Board and its associated bodies. In this connection I note with approval that you have designated your deputy to serve as a member of the Board, thereby bringing to the Board's deliberations the relevant facts and judgments of the Central Intelligence Agency.

As directed by the President and the National Security Council, you will establish with the advice and assistance of the U.S. Intelligence Board the necessary policies and procedures to assure adequate coordination of foreign intelligence activities at all levels.

With the heads of the departments and agencies concerned you will maintain a continuing review of the programs and activities of all U.S. agencies engaged in foreign intelligence activities with a view to assuring efficiency and effectiveness and to avoiding undesirable duplication.

As head of the Central Intelligence Agency, while you will continue to have overall responsibility for the Agency, I shall expect you to delegate to your principal deputy, as you may deem necessary, so much of the direction of the detailed operation of the Agency as may be required to permit you to carry out your primary task as Director of Central Intelligence.

It is my wish that you keep me advised from time to time as to your progress in the implementation of this directive and as to any recommendations you may have which would facilitate the accomplishment of these objectives.

I would just like to say for the record, Mr. Chairman, that one approaches responsibilities of this type with considerable concern, for many reasons, not the least of which is the extreme competence of Mr. Dulles, my predecessor, and also General Cabell, who is Deputy Director, who is resigning as of January the 31st.

That completes my statement.

Senator SALTONSTALL. Mr. Chairman, may I make a motion before you ask any questions in your capacity as chairman?

Chairman RUSSELL. Yes, sir.

Senator SALTONSTALL. My motion is that the Chair, who undoubtedly has the responsibility, anyway, of deciding the questions to ask in open session, and the questions in closed session, of this very important Agency regarding intelligence, make it clear that any question that he believes should be asked in closed session, rather than in open session, be so determined by him, and that that question not be then asked.

In other words, that the Chair shall have the responsibility, with the approval of the committee, of determining what questions may be asked in open session and in closed session.

We want to give every member a chance to ask all the questions that he wants to ask and should ask. There are undoubtedly some questions, especially those raised by Senator McCarthy, that, in my opinion, should be considered in closed session rather than open session.

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And it is with the feeling of giving the Chair the support of the committee that he assume this responsibility that I make that motion.

Chairman RUSSELL. Let me say that I am sure that every member of this committee has the same interest as the Chair has and will not ask any question that is inappropriate and classified in this open hearing.

We shall not under any circumstances deny any member of this committee the right to ask any question they want in any area, however highly classified.

But I am sure that the members of this committee have the same interests I have in not getting into the field of classified material. I do not anticipate any difficulty. You have heard the motion by Senator Saltonstall. I did not request that he make such a motion.

Senator SYMINGTON. Mr. Chairman, my only thought about it, if I may say so, is that it seems to me that this witness is entirely capable of deciding himself what questions he could answer in an open hearing and what he could not.

Chairman RUSSELL. I think that is undoubtedly true, but I want to say——

Senator CASE. That would be his basic qualification for the office for which he is nominated.

Senator JACKSON. May I also add something, Mr. Chairman. I should also like to comment that a question itself could be a revelation of classified information, so that it is the duty and responsibility of us as Senators to remember the questions that we ask might, of themselves, reveal classified information.

But I think we all understand that.

Senator SALTONSTALL. I think we all do, Senator Jackson and Mr. Chairman, but I wanted to give the support to the Chair in making any ruling before any questions are asked even by the Chair himself, so that we have that perfectly clear understanding.

Chairman RUSSELL. I appreciate the Senator's suggestion, and, of course, the Senator can make any motion he wishes, but I would ask him not to press that motion right now. If we get to that question, the Chair will certainly express his opinion, if one is classified.

Mr. McCone will know and any member of this committee will know.

I am most grateful to the distinquished Senator from Massachusetts, but I ask him not to press it.

Senator SALTONSTALL. If there is the understanding, what I wanted to accomplish was to help support the Chair.

Chairman RUSSELL. I am extremely grateful to the Senator for his fine expression of confidence. Through all the years he has been a pillar of strength in the operation of this committee, whether I have been sitting where I am now, or whether I occupied the seat to my left.

I have a few questions.

Mr. McCone, do you conceive of your position as being one that makes policy in any respect that affects any part of this country?

Mr. MCCONE. No, Mr. Chairman.

I do not think that the role of the Director of Central Intelligence is a policymaking position. I think the responsibility is to develop the facts and report them promptly and clearly and properly evaluate it to those who are responsible for making policy.

Chairman RUSSELL. Do you think that the Central Intelligence Agency could carry out any operation in any foreign country without

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the knowledge and approval of the Secretary of State and the President of the United States?

Mr. McCONE. No.

The operations and activities, the operations of the Central Intelligence Agency which are carried on in foreign countries are with the knowledge of both the Secretary of State and the President.

Chairman RUSSELL. Has the office of the Director of Intelligence or have the activities of the Central Intelligence Agency, been reorganized?

Mr. McCONE. No, not appreciably, Mr. Chairman, except in the one respect that was mentioned both in Senator McCarthy's statement and in the President's letter, and that was to place on the U.S. Intelligence Board the Deputy Director of Central Intelligence as the Agency's representative on the Board, thereby relieving the Chairman of the Board from the responsibility of being the advocate of the Agency's position, so that he, as Chairman and the representative of the President, could act objectively on controversies when differences arose between the 10 or 12 members of the Board.

That is the first and most important change that has been made to date.

Chairman RUSSELL. Senator McCarthy suggested that there had been some change perhaps in the responsibilities of the Director of the Central Intelligence Agency that either increased or decreased his authority.

Has your authority been enhanced or diluted in any way, or has the authority of this office been either enhanced or diluted in any way, other than the one that you suggest?

Mr. McCONE. No.

Chairman RUSSELL. Since you have taken over the office?

Mr. McCONE. No, not at all; not at all.

I think the purpose of the President's directive was to be sure that the Director of Central Intelligence was his principal intelligence officer to exercise both activities which are provided for in the law.

One is the direction of the Agency itself; and the other is the coordination of the community as a whole, and that is done in the interests of, first, avoiding duplication, but, equally important, to see that there are no gaps.

Chairman RUSSELL. I know of no agency of Government or official of Government other than the President of the United States or the Congress of the United States that has the power under the Constitution either to enhance or to dilute the authority of the Director of Central Intelligence Agency, as spelled out in existing law and in the existing Executive directives. Do you know of any proposal that the President has under consideration that would alter the nature of your authority or the operation of your office?

Mr. McCONE. None that he has acted upon. There have been proposals made to him. He withheld any action or any comment on them, pending my appointment, and then submitted them to me for my consideration.

The first action that was taken was the one I mentioned and the general concept of the office, as embodied in his letter which I have just read, and I think that that is in strict conformance with the spirit of the act that established the Agency.

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Chairman RUSSELL. Mr. McCone, I am sure you are aware of the fact that the legislation creating the Central Intelligence Agency was considered in this committee.

We consider that this committee is the one that has the overriding responsibility for exercise of the congressional authority over the Central Intelligence authority.

Mr. Dulles and your other predecessor in office have been called before this committee or subcommittees on numerous occasions, and they have always been both cooperative and forthright in their responses to any questions asked about any of the operations of the Central Intelligence Agency.

Do we have your assurances that the CIA during your tenure as Director, if you are confirmed, will continue this policy of relationship with this committee?

Mr. McCONE. Yes, sir; most certainly.

Chairman RUSSELL. I have another question. I want to get this clear as a corollary, of course, of the first one.

The CIA is established under the National Security Council, and in the very nature of things the Department of State would have a great deal to do with certain of the operations of the Central Intelligence Agency.

But, despite that fact, it is most important that this committee have at all times the independent judgment of the Director of the CIA without regard to any policy objective of any executive department, and I would like to be reassured that the information and the views that you would present to this committee, when you are asked questions, would represent your own conclusions in the intelligence field, not colored or influenced by any of the executive agencies of Government.

Mr. McCONE. I can give you that assurance, Mr. Chairman. As you note from the letter that I read, there is no intervening authority or agency between myself as Director of Central Intelligence and the President, and there is neither intent nor arrangement under which the views that I develop as Director of Central Intelligence would be influenced or that I would in any way be inhibited from expressing them to this committee or to higher authorities.

The procedure is to discuss matters of importance such as the national estimates at the U.S. Intelligence Board, and there to receive the views of the entire community. In the final analysis that Board, however, is advisory to the Director of Central Intelligence, who transmits his views to higher authority.

Chairman RUSSELL. Mr. McCone, the position of Deputy of Central Intelligence has increased considerably in importance over recent years, and I notice in this directive from the President that you are expected to delegate to your principal Deputy as you may deem necessary so much of the direction and detailed operation of the agency as may be required to permit you to carry out your primary task as Director of Central Intelligence.

Have you any assurances or do you expect to exercise your own independent judgment in selecting this Deputy without regard to the views of any department of the executive branch of the Government?

Mr. McCONE. In the final analysis, I will recommend to the President a man whom I would hope he would appoint as my Deputy.

The post of Deputy Director is a Presidential appointment and must be confirmed by the Senate.

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Chairman RUSSELL. Yes, but I had understood that the President had usually followed the views of the Director in the selection of his chief deputy.

Mr. McCONE. And I think that will prevail.

Chairman RUSSELL. Do you consider that your responsibility is subject only to the overriding authority of the Commander-in-Chief, the President of the United States?

Mr. McCONE. That is correct.

Chairman RUSSELL. Senator Saltonstall?

Senator SALTONSTALL. Thank you, Mr. Chairman.

Mr. McCone, possibly you have answered this question to the chairman, but I would like to emphasize it.

You intend to do your utmost to reorganize the CIA in any way that you think will make it a more efficient instrument for procuring intelligence and for carrying out its responsibilities?

Mr. McCONE. Yes, I think so.

I am studying the organization of the agency very intently, and I think that some changes are going to be indicated. I must say that the present pattern of organization of the agency is a result of years of study by some very competent people, both within the Government and outside consultants, and it is not a bad pattern of organization, although changes will be indicated, I feel sure.

Senator SALTONSTALL. As one who has the utmost respect for your predecessor, I am confident that you are willing to do everything you can to make it more efficient, but a new person coming in may have some ideas that would make it better. Certainly, you are going to do so, to the best of your ability, are you not?

Mr. McCONE. I think in all these departments of Government there is an evolution in management procedures and, with that, improvement.

Senator SALTONSTALL. The chairman brought out, I think, that you will come before this committee, and any time that the committee asks.

Now, if there is something of importance that you believe this committee or any subcommittee of the Senate should know about in connection with your work, you will be willing, or you will undertake to initiate a meeting with us, as well as to have us request a meeting with you?

Mr. McCONE. That is correct; yes.

Senator SALTONSTALL. Because many times it is difficult for us to know what may be going on, about which we should be informed.

Mr. McCONE. Yes.

I would most certainly seek that arrangement with the chairman. It was an arrangement that I had with the chairman of the Joint Committee on Atomic Energy, and I initiated any number of meetings with the committee as a whole or a subcommittee during my tenure in office.

Senator SALTONSTALL. Now, Mr. Dulles testified a number of times before the Space Committee and other committees that it was his responsibility, as he understood his job, to get the facts, but to have no policy opinion on those facts.

Now, Mr. McCarthy brought out several questions with relation to your opinion on the nuclear moratorium and on other matters.

Now, when you assume this job, it is my understanding that it is your job to report the facts to the proper policymaking members of

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the Government and not to express your opinion in reporting those facts, unless, of course, in extreme cases it may be asked.

But, presumably, it is your job to report the facts and let them make the policy.

Mr. McCONE. As I said, from the standpoint of my competence in office, it is my responsibility to report facts, and, furthermore, I think I should avoid, so far as possible, being drawn in on a personal basis into any policy discussions because that, to an extent, may have some effect on what people, the validity that people might attach to the facts.

However, I would expect that because of the various areas of activity that I have had in Government in the past, that maybe my personal opinion may be asked on some subjects. But in my role as Director of Central Intelligence, it would be beyond my competence to deal with policy.

Senator SALTONSTALL. That is my understanding, and I hope that you carry that forward.

Now, I would like to ask this. There have been certain newspaper comments recently upon your qualifications to hold this office.

You were investigated, if that is the right word, or studied by a subcommittee of this committee in May 1950. That subcommittee was headed by Senator Byrd of Virginia, Senator Knowland, and Senator Hunt, on the proposal of Mr. Thomas K. Finletter to appoint Mr. John A. McCone of California as his assistant.

Now, that subcommittee reported favorably, and the full Committee on Armed Services recommended your appointment to that position in June 1950 and the Senate followed the recommendation of the committee.

At that time you gave some very substantial memorandums and letters regarding your certain holdings in the shipping business, and so on.

Again in 1958, when the question of your appointment as Chairman of the AEC came up, July 2, 1958, you were questioned by Senator Anderson and others on the Joint Atomic Energy Committee as to your holdings and as to whether those holdings would in any way affect your responsibility as Chairman of the AEC. And that committee found no evidence to prevent you doing that, and you were unanimously recommended by that committee, and the Senate confirmed your appointment.

Now, the events discussed in these newspaper articles, which I have read, were all prior to these two confirmations with one exception. But before I take up that exception, I would like to ask you:

Have any of the facts which you gave out in your memorandums, in your letters in 1950 and in 1958 to the committees, changed between 1958 and the present time?

Mr. McCONE. No. There has been no change.

Senator, I do not think that there has been any change in my personal holdings, none that I can think of, since I took office as Chairman of the Atomic Energy Commission in 1958. I have substantially the same portfolio of stocks, and I retain the ownership of my shipping companies, which I had both in 1950 and 1958.

Senator SALTONSTALL. Your shipping company, the management of it, if I read these comments correctly, has been turned over by you to some agencies who operate it and you are completely out of the management or operation of that company; is that correct?

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Mr. McCONE. Yes.

In 1958, I turned the management of the shipping company over to others, and disassociated myself entirely. I then at that time placed the stock of those companies in trust in a bank, which was an irrevocable trust, revokable only when I left the Government.

Now, I have not placed that stock back in trust. I am perfectly willing to do so. I had not thought it was necessary because I cannot see that there is any interrelationship or any possible conflict of interest.

The atomic energy law is quite stringent in regard to that. It specifies that a Commissioner will engage in no occupation, profession, or business activity, and I just set that over in trust as an added insulation. While that could be done, I have not done it. I am perfectly willing to.

Senator SALTONSTALL. What you are telling us is that you are going to give your full time to the CIA, but you do not think that the ownership of certain stock in a shipping company is in any way a conflict of interest with relation to your duties in the CIA?

Mr. McCONE. None whatsoever.

Senator SALTONSTALL. But the management of that company is completely out of your hands at the present time?

Mr. McCONE. That is correct.

Senator SALTONSTALL. Now, there is one statement that was made in the newspapers that was not prior to 1958, and that is the question of to what line the nuclear ship *Savannah* was assigned, and the argument is that it was assigned to a company that was owned by you at the time that you were interested or about to be interested as Chairman of the AEC.

Have you any statement which you would care to make to the committee regarding that?

Mr. McCONE. Yes.

The operation of the *Savannah* was assigned to the States Marine Lines, in which I have no direct interest whatsoever. However, Mr. Henry Mercer and others in the States Marine Line were associated with me and others in shipping ventures, and for that reason this particular article that you refer to seems to infer that I in some way influenced this contract.

Now, the facts are that this contract was negotiated during the spring of 1958. It was awarded on the 6th of June of 1958. I took office the 9th or 10th of July, some 6 weeks later. Furthermore, the contract was negotiated not by the Atomic Energy Commission, but by the Department of Commerce, and the full extent of the AEC participation was to have a man on a committee that reviewed the thing.

We registered—and this was prior to my taking office—no objection to the award. So I have no part in that whatsoever.

Senator SALTONSTALL. And did you, prior to your appointment, discuss that question of the assignment of that ship with the Maritime Commission?

Mr. McCONE. No.

Senator SALTONSTALL. Or with the Department of Commerce?

Mr. McCONE. No.

I at no time discussed the assignment of that contract with anyone in Government.

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Senator SALTONSTALL. So that the report that you had something to do with the assignment of the *Savannah* to that company is not based on fact?

Mr. McCONE. That is correct.

Senator SALTONSTALL. Now, just one more question, Mr. McCone.

Do you know of any conflict of interest or any reason that you have not given to us or given to the prior committee that could be considered a conflict of interest in your appointment to this very important office?

Mr. McCONE. I know of none.

I have had the matter examined by my General Counsel who, in turn, has discussed it with the Attorney General's Office, and have given me an opinion that there is no conflict of interest.

Senator SALTONSTALL. Thank you, Mr. Chairman.

Chairman RUSSELL. Senator Symington?

Senator SYMINGTON. Mr. Chairman, I have not had a chance yet to read the full statement of Senator McCarthy.

Chairman RUSSELL. We will have rounds of questions, so you can ask all the questions you wish.

Senator SYMINGTON. Shall I proceed then, sir?

Chairman RUSSELL. Yes. You will have another opportunity.

Senator SYMINGTON. In 1947, I first met Mr. McCone. He was working as adviser to Mr. Finletter, who was Chairman of the President's Air Policy Commission.

When Mr. Henry Ford decided he could no longer devote the time, Mr. Finletter had been impressed to the point where he asked Mr. McCone to become a member of that Commission.

In the spring of 1950, for reasons that are not important, I decided to leave the Air Force and asked President Truman if he would appoint Mr. Finletter Secretary. President Truman said he would appoint him. I said Secretary Finletter would accept the position provided the President would also agree to have Mr. McCone as Under Secretary of the Air Force. The President said that if he was the right man, he had no objection to the fact that he was a Republican.

And so he came before this committee.

All of the questions normally asked him as a new entry into a position of that character were asked before this committee, and he was confirmed by the Senate.

Later on he retired into private life. Then President Eisenhower, with an obvious problem in the Atomic Energy Commission, asked him to become Chairman of that Commission. He accepted that position. Once again he was asked all questions considered important, and he was confirmed for that second position.

To the best of my knowledge, the confirmation was unanimous. I am not sure about that.

Is that correct?

Mr. McCONE. Yes, on both occasions.

Senator SYMINGTON. On both occasions.

I might add that I mention his being a Republican because one of my colleagues said, "Why can't the President get a Democrat?"

One of the great teams in this business of Government since I have been connected with it was put in by President Roosevelt, when he had Secretary Stimpson, Secretary Knox, Secretary Patterson,

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Secretary Lovett, Secretary McCloy, all well known to most of this committee and all incidentally, Republicans.

So I think that far from there being any criticism of President Kennedy, there should be commendation for him in his effort to get the best man he could for this important position, regardless of party.

I have been especially interested in new blood in the Central Intelligence Agency because of its importance to our national defense. Inasmuch as the previous administration of this Agency told us early last fall that their estimate of Russian long-range missile capacity in mid-1961 was only 3.5 percent of what they estimated it would be only 19 months previously, and inasmuch as in a nonaggressor nation like ours there are tens of billions of dollars annually spent by our Government, which they tax the people for, our own defense plans would seem to depend primarily on what our national intelligence believes a possible enemy is doing.

The President's effort to improve the management of the Central Intelligence Agency—and I say this without the slightest criticism of the past—should be commended by all Americans.

I never saw this statement of Senator McCarthy's before; but there are questions in it which might properly be asked by people who read it.

First, on page 2, it says that:

"Intelligence is too important to be left to the unsupervised," a quotation from Mr. Hanson Baldwin of the New York Times. I would estimate that in many cases, Mr. McCone, you will be the most supervised man in the Government. To the best of my knowledge, yours is the only operating agency, which in effect, reports to a council, the National Security Council in this case, although inasmuch as that is an advisory body to the President, therefore you report directly to the President.

But is there any belief on your part that you will be unsuprevised in this position?

Mr. McCONE. No, Senator Symington.

I think that with respect to the areas of greatest concern that there is adequate supervisory machinery established.

Senator SYMINGTON. The statement says the Director of the Central Intelligence Agency is Chairman of the U.S. Intelligence Board.

Mr. McCone has changed the procedure and asked that the Deputy Director of CIA sit as a member of the Board while Mr. McCone presides.

That, to me, would seem to be a useful and logical request on your part. It is brought up here, first, I ask if it is true; and, secondly, if so, why?

Mr. McCONE. Well, in answer to the first part of your question, it is true.

The reason for it is that there was a feeling of the body of opinion within the intelligence community that the Director of Central Intelligence, sitting as Chairman of the Board and at the same time the advocate of the agency viewpoint, in any controversies with, or differences of opinion with, the other elements of the intelligence community might be a prejudiced Chairman.

Therefore, it appeared to me that if I served as Chairman and as the President's representative, and the Deputy was the advocate of the

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agency viewpoint, it would give me a considerably more objective point of view.

Senator SYMINGTON. That makes sense to me.

Now, on the top of page 4 the Senator from Minnesota makes the statement about the ousting of Mossadegh.

History has not yet clearly demonstrated that this was the wisest policy.

I am chairman of the Mid-East and South Asia Subcommittee of the Senate Foreign Relations Committee, and spent considerable time last fall in Iran. We all have a right to our opinion. My opinion is that if Mossadegh had stayed on, the Tudeh Party would have dominated and today Iran would be a Communist country.

In any case, this is not an examination of our foreign policy, as I see it. It is an examination of you as the new appointee of the President to direct the Central Intelligence Agency. So, for the record, did you have anything to do with the Mossadegh episode?

Mr. McCONE. No, sir.

Senator SYMINGTON. Did you have anything to do with the gyrations incident to Souvanna Phouma and all the other Phoumas in South Vietnam?

Mr. McCONE. Yes.

As a member of the National Security Council, we discussed the Laotian situation a great many times. And, as you know, I sat on that Council as Chairman of the Atomic Energy Commission, and this subject was before us quite often.

Senator SYMINGTON. You were a statutory member of the National Security Council.

Mr. McCONE. Not statutory, but by invitation by President Eisenhower.

Senator SYMINGTON. In other words, President Eisenhower wanted your opinion and advice in these matters so he asked you to sit on the National Security Council?

Mr. McCONE. That is correct.

Senator SYMINGTON. With him and the others.

Mr. McCONE. With the National Security Council and the Cabinet.

Senator SYMINGTON. Now, there have been some implications that perhaps you have not had too much experience in intelligence. Is there any higher intelligence requirements in the Government that you know of beyond the Atomic Energy Commission?

Let me rephrase it this way:

Even though you are cleared for top secret documents in normal branches of the Government like the Defense Department, that does not clear you for atomic information, is that correct?

Mr. McCONE. That is correct, yes. That is correct.

Senator SYMINGTON. Thank you.

The fact that Chairman Glenn Seaborg announced major changes in the organization of the operating staff of the Commission, the implication is that when he got there, he found there were some improvements he could make in the operation of the Atomic Energy Commission.

In my earlier business career I dealt primarily with the railroads, General Motors and Sears, Roebuck. The railroads were never trying to reorganize but General Motors and Sears, Roebuck were doing it every month.

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The relative position of those three might be considered when also considering that fact. Regardless of any efficiency in a company, the policy of the better corporations, or the better Government departments, is to constantly look for improvement in management in order to get maximum return from investment. Is that a fair statement?

Mr. McCONE. Certainly, that is true.

Senator SYMINGTON. Now, the statement here would seem to place you into what might be called the big bomb group. You and I have not talked about these matters for many years. As I remember, when there were people who were willing to, in effect, rest our military position or a large percent of it, on the concept of strategic retaliation, you were the leader in the civilian end about the importance, also, of tactical air.

Is that a fair statement?

Mr. McCONE. Yes; I think that is right. I think I had a great deal to do with the development of tactical air, although I was a strong supporter, have been and continue to be a strong supporter, of the concept of massive retaliation.

Senator SYMINGTON. In other words, you want to see us equipped to fight every type of war, based on your experience, and not just one type?

Mr. McCONE. That is right.

Senator SYMINGTON. Do you agree with the President when he says we should have some difference between humiliation and nuclear response?

Mr. McCONE. I think that is a statement that is subject to a variety of interpretations, and I would prefer not to comment on it.

Senator SYMINGTON. Would you comment on it in executive session?

Mr. McCONE. No.

I will state this: That I think that we must have a capacity to conduct wars at various levels, small wars that we might become engaged in as we did in Korea. We also must have the capacity to handle ourselves in the ultimate war.

Senator SYMINGTON. I do not see how anybody could object to that position, the logic of it.

Now, on this question of moratorium, the statement says you have been outspoken in opposition to an unpoliced moratorium for nuclear weapons testing.

Is that correct?

Mr. McCONE. Yes.

Senator SYMINGTON. I join you in that and the others who have been unwilling to trust the Communists in this field.

In that connection a former member of the Atomic Energy Commission pointed out to me this testimony, Mr. Chairman, which was in the Joint Committee on Disarmament, April 16, 1958. I mention this because Dr. Bethe is quoted often in this regard.

On that day I asked Dr. Hans Bethe:

> If we are ahead, as you say, then, of course, it is to our advantage to stop testing now. But if we are ahead and we stop testing, and they are behind and agree to stop testing but do not, then, of course, they would rapidly overtake and pass us with respect to the development of weapons. Is that a fair statement?

And Dr. Bethe replied:

> If they continued testing and we stopped it, they would certainly catch up and overtake us. However, it is my belief, as I have said, that they could not substantially improve their capability without a tremendous risk of being detected.

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I present that, as the Soviet's have gone from persuasion to intimidation, they ran some 50 atmospheric tests in complete contempt of world opinion, and thereby tremendously improved their relative military position as against the position of the United States.

Chairman RUSSELL. Whose testimony is that, Senator?

Senator SYMINGTON. Dr. Hans Bethe, Mr. Chairman, before the Joint Committee when members of this committee, and the Atomic Energy Committee, were also with Foreign Relations.

Senator SALTONSTALL. The questioner was yourself?

Senator SYMINGTON. The questioner was myself, and that was Dr. Bethe's reply.

Getting down to this letter, there have been some quotations from the letter, a statement about the letter these scientists wrote. I have never seen the letter, and would like to have a copy of it.

Mr. Chairman, I would like to read this letter and, if necessary, ask some questions on it when my turn comes again.

Chairman RUSSELL. Very well.

I would assume he will be asked about the letter, whether it is the one he wrote. It has been covered rather fully in the hearings before the Atomic Energy Committee in 1958. It is available so far as the records of the Senate are concerned.

Senator SYMINGTON. That is true, Mr. Chairman.

Mr. McCone, did you recommend that these scientists be discharged from their position because of what they wrote in support of a particular candidate in 1956?

Mr. McCONE. No. I brought no formal charge against them before the Board of Caltech. My letter, which I presume is the letter you have, was directed toward Dr. Lauritsen, and it was in criticism of, first, this position they took which I was in disagreement with, and, second, the fact that they acted on the mantle of their high authority as a group of Caltech scientists, and I objected to that likewise. However, my communications were directly with them and not with the university authorities.

Chairman RUSSELL. The letter you wrote, the one you furnished the Atomic Energy Committee in 1958, which appears in the printed record of that year?

Mr. McCONE. Yes. It is in the printed record of the hearings.

Chairman RUSSELL. And you wrote it to the professors?

Mr. McCONE. I wrote it to the professors and not the university authorities, and I noted from the carbon copy this morning, just to refresh my memory, there was no copy of it sent. At least there was no copy indicated that it went to any other source.

Senator SYMINGTON. Has the committee a copy of the letter?

Chairman RUSSELL. Here it is. It was printed in the hearings before the Atomic Energy Committee. I notice he very strongly opposed unilateral abandonment of atomic testing in that letter.

Mr. McCONE. Yes, sir; I did oppose it very strongly.

Chairman RUSSELL. I am still opposed to it now, I may say.

Mr. McCONE. No, the point I was making, Senator Symington, was that my carbon copy of that letter does not indicate that copies of the letter were sent to the university. There was no official transmission to the university that I recall now. This is several years back, and I must go on such records as I have here.

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Senator SYMINGTON. Is there anything further that you would like to say with respect to this letter? You did not agree with these people; and you were a trustee of the university at that time.

Mr. MCCONE. Yes, I was.

Senator SYMINGTON. And you disagreed with them and you told them that you disagreed with them and you told them why, is that correct?

Mr. MCCONE. That is correct.

Senator SYMINGTON. Let the record show I have never discussed this with Mr. McCone. You sent no copies to anybody?

Mr. MCCONE. None officially, no. I cannot say that somebody did not see copies of it.

Senator SYMINGTON. To the best of your knowledge?

Mr. MCCONE. There was no official copy, and I did not request the board of trustees to take any action on discharging any of these men.

Senator SYMINGTON. So that any statement or implication you tried to get these people fired is incorrect, is that correct?

Mr. MCCONE. That is right.

Senator SALTONSTALL. Would the Senator yield at this point on this question?

Senator SYMINGTON. I would be glad to yield.

Senator SALTONSTALL. Mr. McCone, in connection with the letter, Representative Holifield said—this is on page 16 of the testimony on the hearing of John A. McCone to be a member of the Atomic Energy Commission, dated July 2, 1958—Mr. Holifield stated:

> Mr. McCone, I listened very carefully to the reading of your letter. I certainly think you had all the right in the world to write such a letter. There are many things in the letter with which I concur. I have debated in public with Dr. Linus Pauling against this so-called position which, as I understand it, is a bit fuzzy and is quite a bit on the unilateral side. I could not sustain such a position myself. I think that it will have to be an international agreement which will run concurrently and which will be adequately policed and inspected to assure compliance by an international team.
>
> There was one thing, however, that I noted in your previous statement which I thought I might ask you a question on. You made the statement that this group of scientists was using the university as a platform. I would like to know if in signing their signatures they signed it as individuals, or did they sign it as 10 scientists of Caltech University, or if that was the reference given to the letter by a newspaper headline.
>
> Mr. MCCONE. I think they signed it as individuals, but it was accredited probably by the newspapers.

Mr. Holifield agreed that you had every right to make the statement that you did at that time. I thank the chairman. I hope that might be helpful.

Senator SYMINGTON. Mr. McCone, I want to get this straight in my mind. We have heard talk today about academic freedom.

All people have freedom, as well as academicians. You were a trustee of this university. You, therefore, had certain authority and responsibility connected therewith. You did not agree with these people. You wrote them a letter stating, or at least one of them, that you did not agree, and you did not ask that they be discharged because they wrote the letter; is that correct?

Mr. MCCONE. That is correct.

Senator SYMINGTON. Now the Senator from Minnesota asked six questions here. The first is: Is the CIA to be reorganized; and, if so, in what respects?

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I do not see how you would know how you could reorganize it until you get into it and see it operate for a while, but, nevertheless, perhaps you could.

Would you comment on that?

Mr. McCone. Well, I can go no further at this point, Senator Symington, than my prior remarks, because, as you know better than most, the problem of reorganizing as large a department of Government as this Agency, with a serious undertaking, is one that demands a most penetrating study.

Senator Symington. The second question he asks is: What bearing would such changes have upon the duties of the head of the CIA and upon the operation of that Agency?

Mr. McCone. I think the letter that I read pretty well answers that question.

Senator Symington. And the third question: What are the views of the nominee as to the authority for some of the actions attributed to the Central Intelligence Agency in the field of foreign affairs within recent years?

Mr. McCone. Well, that gets into the whole question of the juridical or constitutional right of the Agency, and I am not a constitutional lawyer, and I do not feel competent to comment. I can say that it is my understanding, however, that the President has wide powers in the field of foreign relations and is empowered to do the things that are necessary in our national interests, and those national interests now are, in my opinion, best served by taking steps to defeat the encroachment of communism.

I feel that the Agency operates under the direction of the President and will continue to do so, and, as one of the arms of his complex of establishments, is involved in the conduct of foreign policy.

Chairman Russell. Senator, will you permit me to ask a brief clarifying question?

Senator Symington. Yes, Mr. Chairman.

Chairman Russell. If I understood the phrasing of that question, it says: What are his views on all of these acts attributed to the Central Intelligence Agency?

I trust by this answer, Mr. McCone, you are not accepting the responsibility of the CIA for everything that has been attributed to it

Mr. McCone. No, no.

Chairman Russell. I want to make that clear.

Mr. McCone. Not in any regard.

Senator Symington. As one who heard the testimony, Mr. Chairman, before the Foreign Relations Committee of some of the recent activities of the CIA, I must say in all honesty the former supervisors may have made mistakes, but they were fine witnesses, frank and honest.

The next question asked is: What is the nominee's judgment as to methods which can be justifiably used by the Central Intelligence Agency?

That is quite a question in itself.

Mr. McCone. That is quite a question and one which I would not feel free to respond to.

Senator Symington. The next question: What was the extent of the nominee's involvement, if any, in what has been described or reported as "leaks" from the Atomic Energy Commission with reference to the moratorium on nuclear testing?

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Mr. McCone. In all the time that I was the Chairman of the Atomic Energy Commission, I knew of no instance where I personally, or any one of the Commissioners, were charged by anybody with leaking anything either on this subject or any other subject of a classified nature.

Senator Symington. If you had done so, in effect, you would be violating your oath of office, would you not?

Mr. McCone. Why, yes.

There were leaks in this area, but there were none that were attributed to the Atomic Energy Commission.

Senator Symington. If you attempted to operate beyond the supervision and direction of the President and/or his delegated representative as Chairman of the National Security Council in the absence of the President, you would also be violating your oath of office, would you not?

Mr. McCone. That is right.

Senator Symington. Your answer?

Mr. McCone. That is correct.

Senator Symington. Now, the final question here, I think you have already covered. What are the facts with regard to the charge of the nominee's attempt to have the scientists fired at the California Institute of Technology?

Mr. McCone. I can add nothing to what I have said on that subject.

Senator Symington. Mr. Chairman, I have known this nominee for many years. In my opinion, there has never been a better public servant in Washington.

He has twice come before this body. Both times he has testified with complete candor on all subjects asked him. He was, thereupon, confirmed unanimously both times by the U.S. Senate.

This position, from an intelligence standpoint, is closely related, to a lesser extent, to the position he had in the Air Force years ago and, to a greater extent, to the position he held as Chairman of the Atomic Energy Commission.

Many members of that Commission have told me that his work on it was superlative, including the distinguished member of this committee who serves on the Joint Committee, Senator Jackson, and also the chairman, Senator Clinton Anderson.

Both of them said that, in their opinion, his work was superlative in a field which, obviously, is so important to intelligence. I cannot imagine a better training school for a man in this position, a man of high character, one who has had so much successful business experience. When his country asked, he went into the Pentagon Building, national defense, and was the No. 1 man in atomic energy in this country over a period of years.

I congratulate the President for recommending the appointment of Mr. McCone to this position, and look forward to the privilege of voting for him for the second time on the Senate floor.

I thank the Chair.

Chairman Russell. Thank you, Senator.

The committee will now take a recess until 2:15, and I will appreciate punctuality on the part of the members of the committee.

(Whereupon, at 1:10 p.m., the hearing recessed, to reconvene at 2:15 p.m., the same day.)

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AFTERNOON SESSION

Present: Senators Russell (chairman), Stennis, Symington, Jackson, Thurmond, Bartlett, Cannon, Saltonstall, Smith, Case, Bush, and Beall.

Chairman RUSSELL. The committee will come to order.

Senator Smith of Maine is the next Senator in order to question the witness. You may proceed, Senator Smith.

STATEMENT OF JOHN A. McCONE -Resumed

Senator SMITH. Mr. McCone, I shall not be convinced in favor of your nomination until you have made a full reply to Senator McCarthy's statement this morning answering as much as possible of that statement without violating security, which may be made public and given to the American people.

Mr. McCONE. I will be very glad to do that. It would take a little time. It is a long statement and an involved one. I would be very happy to do that.

Senator SMITH. Before I could vote on the nomination I would want to feel that the American public had a reply to his statement this morning.

Mr. McCONE. There are some points that it will be difficult to answer fully in anything other than an executive session.

Senator SMITH. That is all right. I would be glad to have you say what is security and what is not, and permit all the rest of it to be released to the public.

Mr. McCone, my impression of the Central Intelligence Agency, based upon my knowledge and experience with it, as a member of the Senate Armed Services Committee, Senate Appropriations Subcommittee on Defense, the Senate Appropriations Subcommittee on Foreign Relations, the Senate Preparedness Investigating Subcommittee, and the Senate Aeronautical and Space Sciences Committee, has not been a very favorable one.

The Cuban debacle and fiasco climaxed my very serious reservations about the CIA and the way it was being run. Coupled with this record is the fact that the CIA enjoys a virtual immunity from reporting to Congress on its activities and on its expenditures. It has very little, if any, real check placed upon it.

Like no other agency in our Federal Government, it has been given a congressional blank check for its operations and its administration and, unfortunately, under such circumstances, Congress literally operates in the dark as to the CIA, without any chance to measure its effectiveness, its justifications, and whether it should be revised and improved; that is, we operate in the dark until it is too late, and we do not learn of the faultiness and the damage until after the damage has been done. Such was the case of Cuba.

Because of this, and because of the great unlimited and unchecked powers so far as Congress is concerned that are held by such a vital agency, that is such a vital part of the life and death of our country, I believe that we should take the greatest care in the selection and the confirmation of the Director of the Central Intelligence Agency, and it is with these thoughts in mind that I wish to ask you several questions.

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If I seem to repeat some that have been asked, may I say to you that I am doing so purposely as I want to clear my mind on some of the items.

It is my recollection, Mr. McCone, that all of your predecessors had some prior training or experience in the field of intelligence prior to their appointment as Director of the Central Intelligence Agency. Will you tell the committee what training or experience you had in the field of intelligence prior to your appointment to that position?

Mr. McCONE. None.

Senator SMITH. In view of your lack of training and experience in the field of intelligence, you are unique, are you not, in comparison with all of your predecessors?

Mr. McCONE. I do not know that because I do not know the experience of my predecessors.

Senator SMITH. What then makes you feel that you are suitably and adequately qualified to be the Director of the Central Intelligence Agency when you have had no experience or training in the field of intelligence?

Mr. McCONE. I think, Senator, that that was a question decided by others than I.

Senator SMITH. Who recommended you for the appointment?

Mr. McCONE. I do not know.

Senator SMITH. Who besides the President talked with you about taking the position?

Mr. McCONE. No one.

Senator SMITH. Was there not some question in your own mind about your qualifications?

Mr. McCONE. A very serious one.

Senator SMITH. Did you not raise such a question with the President and others with whom you talked?

Mr. McCONE. I raised it in my own conscience, naturally; with my wife. Yes.

Senator SMITH. But not with the President?

Mr. McCONE. No; I did not raise it with the President.

Senator SMITH. It has been alleged to me, Mr. McCone, that the CIA has been or is supporting the political activities of certain ethnic groups in this country, such as the Polish and Hungarian group; is this true, and if so, what comment do you have to make?

Mr. McCONE. I can make no comment on it.

Senator SMITH. Pardon?

Mr. McCONE. I could make no comment on that.

Senator SMITH. Is it true?

Mr. McCONE. I couldn't comment on it.

Senator SMITH. Would you please state to the committee what you feel is the proper mission of the CIA: what are its proper activities; what reports should it make to Congress; what responsibility has it to Congress; and what are the proper limits of CIA?

Mr. McCONE. That is a very difficult and very large question. I think that the responsibilities of CIA, its scope of activities, its purposes, are quite definitely spelled out in the act that created the Agency and the subsequent amendments to that act.

Senator SMITH. I am thinking more in terms of limitations: what it should not do, Mr. McCone. Do you have anything to that?

Mr. McCONE. I think the primary purpose of the CIA, of the Agency, is to collect and to assemble and to correlate and evaluate

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and disseminate intelligence which comes from all sources. In addition, I think that in the discharge of its other responsibilities that are referred to in the law.

Senator SMITH. As you may recall, President Kennedy, in a message to Congress on April 27, 1961, made the following statement on conflicts of interest, and I quote:

> No responsibility of government is more fundamental than the responsibility of maintaining the highest standards of ethical behavior by those who conduct the public's business. There can be no descent from the principle that all officials must act with unwavering integrity, absolute impartiality, and complete devotion to the public interest. This principle must be followed, not only in reality, but in appearance, for the basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.

Three months prior to this statement by President Kennedy, a subcommittee of this committee was appointed on conflict of interests. I am a minority member of the Conflict of Interest Subcommittee which was appointed on January 28, 1961, and I might say here that, frankly, I think we have been delinquent on our assignment to make recommendations regarding committee policy on divestment of securities and holdings and other business interests by civilian nominees.

I have read in the newspapers allegations made by Columnist Drew Pearson charging conflicts of interest in your nomination. These allegations are serious, and I want to be fair to you in connection with them, for I have experienced frequent misrepresentations made against me by Mr. Pearson's associate, Jack Anderson.

So it is with these thoughts in mind that I wish to ask you questions on these allegations. If my recollection is correct, Secretaries of Defense have divested, or some of them have divested, themselves of certain stocks upon taking office.

However, it is my understanding that when you were up for confirmation on appointment to the Atomic Energy Commission, you placed your steamship line stock in trust, but did retain all your stock, and that you further testified that your Joshua Hendy Co. would continue to do business with various contractors, with the Atomic Energy Commission; namely, Union Oil, Dow Chemical, Standard Oil of New Jersey, Standard Oil of California, and Kaiser Aluminum. Is that, in general, correct?

Mr. McCONE. Yes; that is correct.

Senator SMITH. Without attempting to trace in detail the various corporate organizations, the San Marino, the Global Bulk, the States Marine Lines, and the Joshua Hendy Co., is it not true that you, through your companies or your stock, have had significant holdings or joint business interests and activities or working partnership with the States Marine Lines?

Mr. McCONE. Yes.

Senator SMITH. On or about the time you were up for confirmation as Chairman of the Atomic Energy Commission, you were aware, were you not, that the question of selecting a shipping line to operate the atomic energy vessel *Savannah* was very much under consideration in shipping circles here, in the Maritime Commission and in the Atomic Energy Commission?

Mr. McCONE. The matter had been decided prior to my appointment to the Atomic Energy Commission.

Senator SMITH. You did know about it?

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Mr. McCone. I was told after, shortly after, my appointment. The decision had been made by the Department of Commerce on the 6th of June, I believe, that the award had gone forward to the States Marine Lines to operate *Savannah*. This is a decision made by the Department of Commerce and I think I mentioned this morning that this was some 6 weeks prior to my taking office at the Atomic Energy Commission.

Senator Smith. It is my recollection that a special board composed of Maritime and Atomic Energy officials made recommendations as to which company was best qualified to operate the *Savannah* and that of the seven listed, the States Marine Lines, with which you had a working partnership, was rated next to the last, but shortly thereafter something caused a reevaluation which brought States Marine Lines up into second place, and then ultimately it was chosen even over the first ranking American Presidents Line. Did you ever discuss the operation of *Savannah* with any Government officials at any time?

Mr. McCone. No; I did not, and as far as that statement that you just read, the only information I have on it came from the same source as you, because I saw it in the same news article. I knew nothing about this.

Senator Smith. On page 19 of the July 2, 1958, hearings on your nomination to the Atomic Energy Commission, the record shows that you were asked:

> Are there other large industrial organizations with which you have had rather intimate business relationships that do business with the Atomic Energy Commission?

And that in your answer you omitted mention of States Marine Lines with which you had a working partnership and which received the award to operate the atomic energy vessel *Savannah*.

Why didn't you mention the States Marine Lines in your answer?

Mr. McCone. Well, I cannot recall except that there was no contract between States Marine and the Atomic Energy Commission. The contract was between States Marine and the Maritime Administration.

Senator Smith. It is my understanding, Mr. McCone, that you are the second largest stockholder in Standard Oil of California, holding approximately $1 million worth of stock, and that in 1960 Standard Oil of California did more than $2 million worth of business with your wholly owned Joshua Hendy Co. and associates interested in charter hire, and that you have stockholdings in Standard Oil of New Jersey.

It is clear that the CIA must make some evaluations, recommendations, and reports to the President regarding the Middle East where these two oil companies are in competition with other oil companies, and where oil companies have been seized in the past—and also about oil-rich Venezuela.

Do you see any possibility of conflict of interest on these matters as CIA Director when you have such large holdings in these oil companies?

Mr. McCone. Well, in the first place, the amount of holding, my holding, in Standard Oil of California that you mentioned is approximately correct. It might be a little larger than the figure you mentioned. It is far from being the second largest stockholder. There

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are many stockholders that own very much—very much more stock in Standard Oil of California than that figure.

I hold no stock in the Standard Oil of New Jersey.

Quite aside, my opinion is that the holding of stock in an oil company or in several oil companies would have no effect whatsoever on my activities as Director of Central Intelligence, and my responsibilities for the gathering and correlation and dissemination of intelligence in any area of the world.

Senator SMITH. Mr. Chairman, there are some questions in my mind about the allegations that have appeared in the newspapers about Mr. McCone's relationship with the Kaiser Co. and the aircraft production contract obtained by the Kaiser Co. at three or four times the cost charged by the then existing producer, the Fairchild Co., but I will defer to Senator Beall as Fairchild is in his home State.

That is all I have.

Chairman RUSSELL. Senator Jackson.

Senator JACKSON. Mr. Chairman, I am sorry I had to leave early, so I missed some of the questioning.

I would like to make the observation that, as a member of the Joint Committee on Atomic Energy, I have had the opportunity to see and know of the work of Mr. McCone as Chairman of the Atomic Energy Commission.

I must say that, looking at the record, as I try now to do impartially, Mr. McCone demonstrated at all times in his relations with our committee a forthrightness and candor in keeping us currently informed as required by the Atomic Energy Act.

Mr. McCone is, as people realize, a very able businessman and a very able business administrator. I should add further that Mr. McCone has been rather prophetic in his stand on various issues relating to national security. I know this, of course, of my own personal knowledge in connection with the work of the committee. He has demonstrated an inner toughness that is essential to doing that job and this job. He took stands in connection with his work as Chairman of the Atomic Energy Commission that were not always in accord with the views of the people in his own administration. I must say that I found a high degree of intellectual honesty in connection with the work that he was engaged in as Chairman of the Atomic Energy Commission.

I know that the problem of conflict of interest is a difficult one. We have some statutes on the books that have been there for a hundred years. In dealing with the problems that we face today they sometimes make it very difficult for the Government to get the people in Government that we sorely need and will need for many years to come.

I have always been of the opinion that the real test in the long run is whether a person is honest and whether he is forthright. If a man is a crook he can divest himself of all of his stock, and he still is a crook.

Based on what I had an opportunity to observe during the time Mr. McCone served as Atomic Energy Commission Chairman, he seemed to me to meet the standards that, I think, apply to this most sensitive position.

The question was asked by Senator Smith, and I simply want to ask it again, can you think of anything in connection with your present interests that would in anywise make it difficult for you to collect

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the information impartially and to make a judgment based on that information?

Mr. McCone. None whatsoever, Senator Jackson. I feel that my interests are such that they present me with no conflict of interest or that they would have no weight at all with me in any judgments I would make.

Senator Saltonstall. A little louder

Mr. McCone. They would have no weight on me or influence on me in any judgments that I would make.

Senator Jackson. Now, in connection with the States Marine matter that has been in the newspapers, too, as I understand it, you had nothing to do with the procurement of that contract prior to your becoming Chairman of the Atomic Energy Commission?

Mr. McCone. No, none whatsoever. I had no interest, have never had an interest, in States Marine Lines, who was the company that was awarded the contract to operate the *Savannah*.

I did have some, and still do have, some interests with the owners of States Marine Lines who operate through a series of companies, like most shipping companies do. So you might say in that way I have a relationship with the owners of the States Marine Lines, but no direct interest.

But behind all of that is the fact that—two points which must be borne in mind, since this matter has appeared in the press, quite unfairly, I might add—one was that this contract was awarded before I was made a member of the Commission, and furthermore, the Commission had nothing to do with it except at the staff level they offered no dissent to the award of the contract to States Marine, and this, I am told, was done on the 6th of June.

Senator Jackson. So you had no connection with this directly or indirectly?

Mr. McCone. I had no connection with it at all.

Senator Jackson. That is all.

Chairman Russell. Senator Thurmond has another meeting in a very short time, at which he not only represents himself but the chairman of this committee. I appreciate Senator Case's being gracious enough to give him an opportunity to ask his questions now. Senator Thurmond.

Senator Thurmond. Thank you, Mr. Chairman. I wish to express my appreciation to the Senator from South Dakota, too, for his courtesy.

Mr. Chairman, I have but a few questions, but I want to make some comments on this nomination.

I have not had the opportunity of knowing Mr. McCone well, only through reputation, but in looking over this biography, to me it epitomizes what has made America great.

We have here a man who went to the public schools, and then he attended college and received a degree.

I was interested to learn that he began as a riveter in the boilershop of an ironworks. Then he became a surveyor with construction gangs, then a foreman of its steel erector crews.

Then when the firm he was with was merged with others, he joined the new firm, and served in various executive positions.

Then he left that business to join another concern, and this firm was later renamed the Bechtel-McCone Corp. It specialized in the

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design, construction of petroleum refineries, processing plants, powerplants for installation throughout the United States, South America, and in the Persian Gulf area.

Then another step, at the outbreak of the war in Europe, with various business associates, he joined the Six Companies Group in forming the Seattle-Tacoma Ship Building Corp., and they built merchant ships first for the U.S. Maritime Commission, and later for the British Government.

Then another step, he assisted in the establishment of the California Ship Building Corp., served as its president and general manager of its Terminal Island shipyard out at Los Angeles.

It became one of the Nation's principal wartime shipyards for the construction of cargo vessels, tankers, and troop transports.

Then after World War II under Mr. McCone's leadership, his company took over the Joshua Hendy Iron Works in California, producers of heavy machinery and equipment such as ship propulsion units, reduction gears, and reclamation equipment, and under his presidency this company redirected its efforts to oversea shipping, particularly the ore-carrying trade in South America, and through its Pacific tankers division, the operation of a fleet of oil tankers in the Pacific.

Then in 1945 another step, he and his associates formed the Pacific Far East Line for cargo trade with Japan, the Philippines, and China.

Now, this gentleman has served the boards of these various enterprises: Curtiss-Wright Corp.; Crocker-Wheeler Electrical Manufacturing Co.; California Bank of Los Angeles; Pacific Mutual Life Insurance Co.; Industrial Indemnity Co.; Standard Oil Co. of California; Western Banking Corp.; Founders Fire & Marine Insurance Co.; and Trans World Airlines.

Mr. Chairman, I don't think I have ever seen a biography of a person who has shown a more steady growth in his life than this gentleman. Starting as a riveter in a boiler shop, and he has risen to be president of tremendous corporations engaged in national defense work, which helped us to win World War II; then he has become a director for some of the leading corporations and companies of these United States. I just wanted to comment on that.

Then, this gentleman has not only made a success and met payrolls and had practical experience which, I think, is so valuable to anyone who serves in a position of Government and in a position that he is going to serve in now, his executive experience, his work all the way up the line, will be of tremendous benefit to him. His work as an employee, his work as an employer, his work as president of his company, will all be of great benefit to him.

But he has taken time out to serve our Government. His ability, his character, have been recognized not by just one administration, a partisan administration, but by several administrations.

In the fall of 1947 he was appointed by President Truman as a member of the President's Air Policy Commission. Then from March to November 1948 he served as Special Deputy to the Secretary of Defense Forrestal, and in May 1950 he was appointed Under Secretary of the Air Force, and I might say that when he left the Government then he was presented with a very high medal for exceptional civilian service. He was given the Exceptional Civilian Service Award which cited him for his part in the doubling of American military aircraft production during that critical year of the Korean war.

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Then when President Eisenhower came in, Mr. McCone served in his administration. In 1954 he was a member of Secretary of State Dulles' Public Committee on Personnel; on the 6th of June 1958, President Eisenhower nominated him for a 5-year term as a member of the U.S. Atomic Energy Commission, one of the most vital and important commissions in our Government, one of the most sensitive, one requiring, I think, the utmost of confidence in an individual.

The Senate has already acted on his qualities and his character and his ability to fill a position when they confirmed him on the 14th of July 1958 or I should say on the 9th of July. On the 14th of July I believe he became Chairman of the Commission.

This gentleman has not only made a success of his own business and demonstrated his outstanding ability and his character in private life and in Government but he has given considerable time to civic, philanthropic, and educational activities. He has been a director of the Stanford Research Institute, a trustee of the California Institute of Technology, a regent of the Loyola University. In 1955 Pope Pius XII made Mr. McCone a Knight of St. Gregory.

In 1956 he awarded him the Grand Cross of the Order of St. Sylvester.

In March 1956 he served as President Eisenhower's personal representative to the Vatican at the Pope's 80th birthday celebration, and he, with Secretary of State Dulles and Mrs. Clare Boothe Luce, represented the President at the funeral of Pope Pius XII.

He has been honored by many institutions with honorary degrees, including the University of California, Notre Dame, Fordham, Clarkson College of Technology, and Catholic University of America.

Mr. Chairman, as I said a few moments ago, to me a record like that is just almost unsurpassed, and I cannot imagine any Member of the Senate thinking of casting his vote against a great American like this, a man who has demonstrated character, ability, energy, industry, enthusiasm, stirred up public service, and all of the fine things for which this country stands in the way of serving and civic and educational and philanthropic and other activities for the good of the country.

I do not have any questions. I just want to make those comments because, it seems to me, that we are very fortunate to have a man like this to accept this position.

I predict that with Mr. McCone as the Director the CIA will be made the most effective instrument of Government that it has ever been since it was founded.

I predict that under his administration great service will be rendered to our country. I congratulate the President of the United States, President Kennedy, for appointing this gentleman, and I am delighted that he has agreed to serve.

I want to say further that there was some point made here about some complaint raised about his outspoken opposition to a nunpoliced moratorium on nuclear weapons testing and that he has publicly issued strong warnings of the danger to the United States if we did not resume testing.

I cannot imagine a sounder position one could take than he took on that issue, and he was in a position to know the danger to this country, and he was in a position to warn the people of this country.

I think he would have been negligent in his duty if he had not warned the people of the United States of the consequences of not

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resuming testing. So far as I am concerned, Mr. McCone, I am very grateful that we have a man like you to serve in our Government. Thank you.

Chairman RUSSELL. Senator Case.

Senator CASE. Thank you, Mr. Chairman.

Mr. McCone, what I have heard about you and read about you all suggests to me that I covet for the Government and for the directorship of a CIA a man of your ability and a man of your wide knowledge.

I do have some questions I want to ask you, because I want to give you an opportunity to establish in whatever way you think it appropriate, in response to these questions, your objectivity in handling the matters that come up with CIA.

I realize that at one point in your statement this morning you said that you did not regard the Central Intelligence Agency as policymaking; is that correct?

Mr. MCCONE. That is correct, Senator.

Senator CASE. But shortly after that you said that you proposed to name the Deputy to a position on the Board where he would become the advocate of the Agency's position.

What do you mean by having an advocate of the Agency's position if he is not to advocate the policy decision?

Mr. MCCONE. I did not get the last part.

Senator CASE. What do you have in mind that the Deputy would do as "an advocate of the Agency's position," unless the Agency had a decision that bore on policymaking?

Mr. MCCONE. Well, this had to do with the representation on the U.S. Intelligence Board. The U.S. Intelligence Board is a board composed of representatives of all components of the intelligence community, and they assemble once a week, and there they review all matters relating to intelligence and, quite naturally, there are differences in viewpoint, differences of emphasis on intelligence findings and reports on the part of the representatives of the various components, various members of the community.

Now, it is in the adjustment and the reconciliation of these different views that I wished, as Chairman of the Board, to be able to sit in a purely objective role, and to have as my Deputy, the Agency's representative on the Board so that he could explain to the Board and advance the arguments concerning the Agency's particular viewpoint on any issue if it differed from the viewpoint of other members of the community.

Senator CASE. When you referred to the Agency's viewpoint, do you mean its policy position or its evaluation of the intelligence?

Mr. MCCONE. I mean its evaluation.

Senator CASE. Evaluation of the intelligence?

Mr. MCCONE. That is right, and policies concerning intelligence undertakings and activities and the organization of the intelligence community.

Senator CASE. It seems to me that there in the last qualification you stated, you modified your earlier statement that the CIA was not policymaking. I was rather hoping that you would stay with the suggested interpretation that the Agency's position was one of evaluation of intelligence rather than the recommendation of a policy.

Mr. MCCONE. I think, Senator, under what we are talking about is policy within the intelligence community versus policy of the Government itself. Quite naturally within a community as large as the

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intelligence community, there are many policy matters relating to the operation of this community. But that has nothing to do with the basic policies in foreign affairs that are of concern to the President and Secretary of State and others.

Senator CASE. Well, for example, the timing of the U–2 flight, would that be in the policy area?

Mr. McCONE. Any such matter of that type, if it were ever to arise, would be a policy determined by higher authority.

Senator CASE. What about a decision, if it were made, in connection with the Battle of the Bay of Pigs to have or not to have air cover, followup, an effort of that sort; would that be policy?

Mr. McCONE. I think that is dealing in an area, Senator, on which I am not competent to answer because I was not here at the time, and it is a greatly debated question, and one in which there were varying viewpoints, and I do not think I am competent to answer that question or to answer your question against that example.

Senator CASE. Well, do you propose to set guidelines for members of your staff in matters of that kind? I do not know it as a matter of fact, but it certainly was suggested in many reviews in the press, that the decisions relating to our participation or our encouragement of the ill-fated invasion of Cuba were a step taken under the encouragement of the CIA.

Mr. McCONE. I cannot answer that question because I do not know the facts.

Senator CASE. My first area of interest, Mr. McCone, in connection with your activities, goes back a considerable time to when I was a Member of the House of Representatives, and had considerable to do with the establishment of what has come to be called the renegotiation statute. That was an amendment which I offered to the sixth supplemental defense appropriation bill in the House of Representatives on April 6, 1942.

We sought at that time, in establishing renegotiation, to provide a method whereby the Government could expedite its preparedness effort without waiting until a firm contract could be arranged, and also where a contract could be given to businesses, either where it had no cost experience in the item that was to be produced or where they might even start with Government tools or Government facilities and producing something.

We sought to provide a means whereby the final determination of costs could be made after an audit of the actual costs, and then the final payment based upon a determination of what would be a fair return.

In the hearings which were conducted by Schuyler Bland, who was chairman of the Committee on Merchant Marine and Fisheries at that time, an exhibit was submitted to Chairman Bland from the U.S. Maritime Commission which indicated that with a capital investment of $600,000 the California Shipbuilding Corp. made an estimated profit of $44 million; that it had used facilities supplied by the Government with a valuation in excess of $25 million.

Further, the testimony before the Bland committee at that time indicated that the Comptroller General's representative, Mr. Ralph Casey, said that some of the selected price contracts were exempted from renegotiation by the Commission, the Maritime Commission, and its Chairman under authority conferred by the Renegotiation Act

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on the basis that profits can be determined with reasonable certainty when the contract price is fixed.

Now, I am sure that I speak advisedly when I say that at the time the Renegotiation Act was passed that it was never intended that a determination by a procurement agency could waive the operation of renegotiation. Any waiver of renegotiation or any acceptance of a fixed-price contract in lieu of it, would have had to have been on the recommendation or an action by the Price Adjustment Board. But apparently in the California ship operations, some were exempted and apparently it became possible for a group with which you were associated, with a basic investment of $100,000 to make profits of over $44 million in the space of a couple of years more or less.

Is that a fair statement?

Mr. McCONE. No, I do not think it is, Mr. Senator. If I could just recall, and now I am speaking from events of now 16 years ago, and I have only glanced through this report of the hearings, my attention being directed toward them because of what I consider an erroneous article which appeared in the newspaper

Senator CASE. If the article is erroneous, this is a good opportunity for you to put in the record the facts as you recall them.

Mr. McCONE. I think all of the statements that you made appear in one way or another in the transcript. However, if you would refer to my testimony, which was under oath, you will see that the facts were somewhat different than those statements. That I and my associates provided not $100,000 or $600,000, but about $3.3 million, as I recall, in stock or subordinated loans which were considered by the Maritime Commission to be the equivalent of stock because they were subordinated to all obligations of the venture, and in addition we provided bank credits for which we were responsible, amounting to some $4 million, I believe.

So there was quite a substantial exposure on the part of the stockholders.

With respect to the $44 million, I have never been able to quite reconcile that, although the fees were very substantial, and the reason that they were substantial is that they were set on a uniform basis by the Maritime Commission for all yards, large and small, and the California Ship, being one of the largest yards, delivered the most ships, and received the most in gross fees, although not a figure—a figure considerably less than that. But that figure does not take into account the fact that there must be deducted, first several million dollars in nonreimbursed costs of the type that accumulate in a venture of that kind, and which are not admissible for reimbursement, and I think that figure was something in the order of $4 million

Then, of course, all of the contracts except those that you referred to were subject to renegotiation, and were renegotiated, and that is not taken into account in the figure that was mentioned, and that reduced the gross income by some amount the details of which I do not recall.

The contracts that were exempt, as you mentioned, was by a decision of the Maritime Administration, not by the California Ship Building Corp., and if there was any violation of the intent of the Congress, it was on the part of the Government agency involved, rather than the contractor.

Finally, of course, there was a 95 percent income tax, and when that was all taken into account, the profits over the 4½ year period, rather

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than 2 years or less, were, while important, were not large in the order of magnitude of figures that you mentioned.

I am very glad that you brought this matter up because I am happy for an opportunity to speak on it.

I do want to also point out that this Government was faced with an enormous requirement for ships far beyond the capacity of the existing shipyards, and what was done was to employ engineering firms such as mine to go out on a management basis and design and build shipyards, to assemble and train the organization, and produce the ships, and when it was all over in 1945, the particular yard that I was interested in was dismantled and the property returned to the city of Los Angeles.

Senator CASE. Mr. Chairman, I am going to make some references to this hearing of Judge Bland's and I should like—I do not want to take any advantage of the fact that I have the hearings in front of me and Mr. McCone may not. If he wants to supplement any of his answers in the record, I personally would have no objection to his doing it. I do not know what the views of the committee would be about it, but with respect to some of the statements that he has made——

Chairman RUSSELL. Let us get this cleared up while we are at it. If Mr. McCone, after refreshing his recollection and seeing this document that you have there, wishes to add anything to what he has said, why, it can appear as an addendum, but I do not want it to appear as testimony given at the committee. You have that privilege.

Senator CASE. This is from the hearings before the Committee on the Merchant Marine and Fisheries, House of Representatives, 79th Congress, 2d session, pursuant to the authority of House Resolution 38. The dates are September 23, 24, 25 and 26, 1946.

On page 10 of these hearings in the testimony of Ralph E. Casey, representative of the General Accounting Office appears this statement:

> In many cases there was nothing the General Accounting Office could do in such a situation in view of the broad authority under which the Commission was operating during the war period. However, the Comptroller General did hold that in his opinion there was no authority of law for converting a cost plus a fixed-fee contract to a lump-sum contract after all the work had been performed and where nothing remained but payment of the amount due. Under date of April 18, 1945 he (the Comptroller General) advised the Chairman of the Maritime Commission as follows:
>
> "Accordingly, you are advised that any conversion of cost type contracts into fixed price contracts upon completion of the work and before final payment has been made will not be recognized by this office insofar as such conversions purport to limit the evidence which the contractor will be required to furnish in support of vouchers covering payment under such contracts, and that unless the vouchers covering reimbursement to contractors are supported by evidence such as will enable this office to make a satisfactory audit thereof, credit for any such payments will be withheld in the accounts of the accountable offices concerned."

It seems, without going into too much detail, that what happened here to avoid the application of the renegotiation statute was that prior to the final settlement, to convert cost-plus contracts into fixed-price contracts and to have the opinion of the head of the Maritime Commission that because they tendered in that kind of a contract it was not subject to renegotiation, and Mr. Casey, in his presentation to the committee, went on to say:

> I daresay that at no time in the history of American business, whether in war time or in peacetime, have so few men made so much money with so little risk

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and all at the expense of the taxpayers not only of this generation but of generations to come.

In connection with the hearings, there was submitted as exhibit 1 a letter from Mr. W. W. Smith, Chairman, to Hon. S. O. Bland, House of Representatives, who was then chairman of the committee, an exhibit A which gave the fees of shipyard contractors in relation to their capital investment.

Under ship construction contracts with the U.S. Maritime Commission as of June 30, 1946, and that lists the California Ship Building Corp. as using facilities that cost $25,213,177; capital investment of shipyard operator, $600,000; estimated profits, $44,423,014.

Now, during the testimony of Mr. McCone, on page 212 of the hearings, there appears this in the record:

Mr. BRADLEY. Mr. McCone, the question I want to ask has to do with your capitalization. This sheet which we had submitted to us by the Maritime Commission showed a capitalization of $600,000 as capital investment of shipyard operator, and I understood this morning that by various figures which you had recited due to stockholders' loans and so forth, you eventually boosted that up to $3,300,000. I wonder if you would go over it again and explain it to me.

Mr. MCCONE. Yes, I will do that. In the first place, there was a stipulation to the original contract.

Mr. BRADLEY. To which contract do you refer?

Mr. MCCONE. The original contracts between the California Ship Building Corp. and the Maritime Commission; that the corporation should be provided with $800,000 of capital subscribed either as stock or as stockholders' loans subordinated to all obligations of the corporation.

Mr. BRADLEY. That is over and above the original $600,000?

Mr. MCCONE. No. I am not now commenting on the contractual obligations.

Mr. BRADLEY. But I mean you organized originally with a capital stock of $600,000; is that correct?

Mr. MCCONE. No, that is not correct, sir. We organized originally in this way: We subscribed $100,000 as capital stock, and we subscribed $700,000 of subordinated stockholders' loans which were subordinated to all obligations of the corporation, including its obligations to the Maritime Commission.

Mr. BRADLEY. Now, on the books of the State of California—are you incorporated under the laws of California?

Mr. MCCONE. No; the laws of Delaware.

Mr. BRADLEY. What does your structure show there as to the capitalization of the California Ship Building Co.? Does it show $100,000 or what?

Mr. MCCONE. Originally it showed $100,000 subscribed, $100,000 of no par stock subscribed. It shows $600,000 of no par stock now.

Mr. BRADLEY. Well, now, where did the $600,000 come from? Is that a $500,000 stock dividend?

Mr. MCCONE. After subscribing the $100,000 of stock and the $700,000 of subordinated loans and about a year later, when the Todd Shipyards Corp. retired, we declared a dividend of $1 million, 50 percent of which was paid in cash to the retiring stockholder, who owned 50 percent of the stock, incidentally.

Mr. BRADLEY. In other words, he got $500,000 for his initial investment of $50,000?

Mr. MCCONE. That is correct.

Mr. BRADLEY. A 10-to-1 dividend. That is a pretty good dividend.

Mr. MCCONE. That is right. Then the other 50 percent was paid in the form of a stock dividend, thereby increasing the stock from $100,000 to $600,000.

Mr. BRADLEY. Everybody got a 10-to-1 cut in the dividends when the lemon was cut up?

Mr. MCCONE. It is not correct to say it was a 10 to 1, because of the subordinated loans of $700,000 being, in effect, equity capital, because they were subordinated to all obligations of the corporation and have the same status as stock.

My interpretation of that, as I read it, was that $1 million was declared as a dividend, for which there had been originally $100,000 invested, possibly $700,000 in subordinated loans, but that the $1 million in dividends was distributed so that half of it went to increase

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the stock from $100,000 to $600,000, and the other $500,000 was paid in cash.

In any event, that was the way in which apparently California Ship Corp. established the profits which led to the building of a considerable empire in the maritime industry.

During your interrogation by Senator Smith I understood you to say that you had no direct interest in States Marine?

Mr. McCONE. That is correct.

Senator CASE. You had an indirect interest?

Mr. McCONE. No. I explained the interest. I had no indirect, direct or indirect, interest in States Marine. I had an interest in other ventures which were with some of the owners of States Marine.

Senator SYMINGTON. Will the Senator yield?

Senator CASE. Is it pertinent to this?

Senator SYMINGTON. Yes.

Senator CASE. All right.

Senator SYMINGTON. What is the problem, is it excess profits? Is it lack of integrity? What is the Senator attempting to bring out?

Senator CASE. I hope, if the Senator will follow the questioning, he will get clearly just exactly what I am driving at.

I started out by saying that I coveted for the Government one who had the ability that Mr. McCone has. I wanted to establish if we could expect an objectivity in his administration of CIA which would permit him to exercise on behalf of the Government as Director of CIA the unquestioned ability that he has.

Senator SYMINGTON. Will the Senator yield for one more question?

Senator CASE. Yes.

Senator SYMINGTON. All he is trying to know at the time——

Senator CASE. The Senator is not asking questions but getting into an argument.

Senator SYMINGTON. I plan asking a question. Weren't these facts known at the time Mr. McCone was approved unanimously by the Senate in 1950 and unanimously by the Senate in 1958, one under a Democratic administration and one under a Republican administration? Isn't that a fair question?

Senator CASE. I think it is a fair question, and the record will show that. But Mr. McCone has already testified that he does not have in trust or irrevocable trust, the business interests which he testified before the Atomic Energy Committee that he was placing in trust at the time that he was confirmed for the Atomic Energy Commission, and at page 50 of the hearings before the Senate section of the Joint Committee on Atomic Energy, July 2, 1958, Mr. McCone testified as follows:

> Gentlemen, in anticipation of my appearance here today, Senator Anderson has requested a statement of all my financial holdings, business activities, and affiliations for incorporation into the record of this committee. This statement has been furnished and includes both the direct and indirect holdings of my own or my wife, Mrs. Rosemary McCone. Section 22 of the Atomic Energy Act of 1946, as amended, requires that no member of the Commission shall engage in any business, vocation or employment other than that of serving as a member of the Commission.

And then Mr. McCone went on to say:

> If appointed to the Atomic Energy Commission, I will devote myself exclusively to the affairs of the Commission, and during my term of office will not engage in any business, occupation or profession.

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Now, it was upon that testimony and on that basis that the Joint Atomic Energy Commission recommended confirmation of Mr. McCone in 1958, and it was upon that basis that the Senators voted for him.

We do not have a requirement for the Director of CIA that requires that he shall not engage in any business, vocation or employment other than that of serving as a member of the agency, but to make the same observation I made this morning, the chairman stated, very appropriately, I thought, that the directorship of the CIA carried with it responsibilities second only to that of the President of the United States, and it would seem to me that we should have as good an assurance of the objectivity of a man, with his undoubted ability, to apply to the duties of this office as the Joint Committee on Atomic Energy and the Senate had in his appointment to the head of the Atomic Energy Commission.

Now, Mr. McCone, do you have an interest in or who is the owner of Global Bulk?

Mr. McCONE. I do not know exactly. I know that Mr. Mercer and others interested in States Marine are interested in Global Bulk, but I do not know who all the owners are. I have no interest in this Global Bulk.

Senator CASE. You have no interest in it, direct or indirect?

Mr. McCONE. I have no interest in it, direct or indirect.

Senator CASE. Former Senator Ball, who is now vice president of the States Marine Shipping Lines testified before the Maritime Commission that the Sequoia Corp. is owned 50 percent by Trans-World Carriers, 50 percent by Kayser Aluminum, and according to information on file at the Maritime Commission, Trans-World Carriers, in turn, is owned 50 percent by Global Bulk and 25 percent by Joshua Hendy, with another 25 percent by the San Marino Corp. of Panama.

You have testified that you were the sole owner of Joshua Hendy in the operations of Trans-World Carriers, of which Joshua Hendy apparently owns one-fourth, and Global Bulk one-half. Would you say you had no indirect interest in the operation of Trans-World Carriers?

Mr. McCONE. No; I have a direct interest in Trans-World Carriers, no question about that. Because, as a matter of record, and this is a change from the situation that existed in 1958, I have personally acquired and own now the great majority of the stock in San Marino Corp. and, therefore, through the sole ownership of Joshua Hendy Corp. and the ownership of 85 percent of San Marino Corp., I own practically half of Trans-World Carriers at this point.

Senator CASE. Isn't it a fact that Global Bulk is wholly owned by States Marine?

Mr. McCONE. I do not know that. I know that some of the States Marine owners, Mr. Mercer, particularly, are interested in Global Bulk, but whether there are others that are interested or not, I do not know.

Senator CASE. Do you know of any working arrangements or partnerships between the Joshua Hendy Steamship Line or its affiliate, Panama Pacific Tankers, and affiliates or subsidiaries of States Marine?

Mr. McCONE. Yes. There are joint arrangements—whether they are with States Marine or whether they are with Global Bulk Carriers,

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I could not say, but it is a little hard to differentiate between the two or three corporate structures on States Marine side.

Senator CASE. Do you know whether or not there is a working agreement between States Marine and Global Bulk and the San Marino Co. for the chartering of certain ships through Naviors, a subsidiary of United States Steel?

Mr. McCONE. Yes, I believe there is a working relationship; the relationship between Trans-World Carriers and Naviors and Trans-World Carriers is, in turn, owned by the people you have indicated.

Senator CASE. You have a partnership with States Marine directly or through a subsidiary in the operation of any Norwegian flag tankers built in Japan for Trans-World?

Mr. McCONE. Yes, we do that. We have a tanker that we own jointly that was built in Japan and registered under a Norwegian flag, and we have it under charter from a Norwegian corporation.

Senator CASE. Do you recall the name of that ship?

Mr. McCONE. I was trying to think of it. No, I do not recall it, Senator.

Senator CASE. Is that vessel engaged in transporting oil?

Mr. McCONE. Transporting oil; yes, sir.

Senator CASE. For Standard Oil of California?

Mr. McCONE. For Standard Oil of California; yes, sir.

Senator CASE. Why is it necessary to have complicated arrangements where you build vessels in Germany or Japan, and then leased to Norwegian operators to fly under Panamanian or Norwegian flags rather than U.S. flags?

Mr. McCONE. The vessels are owned by Norwegian companies and they are operated under Norwegian flags, and that is the only way that they could be competitive because of the high costs of American-flag operations.

Our American-flag operations are restricted to the protected areas of trade such as the coastwise and intercoastal trade.

Senator CASE. Do you know where the principal oil reserves of Standard Oil of California are?

Mr. McCONE. In a general way, yes, I do, Senator. I know they have extensive reserves in Arabia and in the offshore island in the Persian Gulf of Bahrein, and also extensive reserves in Sumatra, and in Venezuela.

Senator CASE. Would the fact that you are a stockholder in Standard of California or that some of the ships in your shipping enterprises and affiliated interests are engaged in carrying oil for Standard of California, prejudice any decision you might be called upon to make as to the emphasis of CIA operations as between a situation in the Gulf of Mexico or near Venezuela as compared with a situation in the Middle East?

Mr. McCONE. None whatsoever, in my opinion.

Senator CASE. Now to this operation of *Savannah*. Isn't it correct that your nomination by President Eisenhower for the Chairmanship of the Atomic Energy Commission came or was made on the 6th of June 1958?

Mr. McCONE. It was announced on that day, yes.

Senator CASE. I suppose it had been discussed some in advance of that, that is, you probably had been apprised of consideration for that before then?

Mr. McCONE. With the President, yes.

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Senator CASE. Is it purely coincidence that that was the date on which the Maritime Board revised its list of best-qualified companies for the selection of an operator for the *Savannah*?

Mr. McCONE. Yes, I think it is pure coincidence, because I had no knowledge of it at all.

Senator CASE. I wanted to give you an opportunity to get that on the record, if that is the fact, and I will ask you an even more direct question so that you can put it in the record as you want. Did you at any time discuss the operation of the *Savannah* with President Eisenhower or the then Secretary of Commerce or the Under Secretary of Commerce, Lewis Rothschild?

Mr. McCONE. No, at no time.

Senator CASE. This morning when we touched on this question of filing a statement of interests, ownership, and official connection, if I remember correctly you stated that you have no objection to establishing the same kind of an irrevocable trust for your holdings during the time that you might be Director of CIA that you did at the time you went on the Atomic Energy Commission or became its Chairman.

Now, if I misstated your position, I want you to correct it, but if that is a correct recollection of what you said, by direct question now I will ask you would you be willing to submit a list of those holdings to the subcommittee, and I am not on the subcommittee, but to the subcommittee of which the chairman has designated members for that purpose in connection with secretaryships in the Department of Defense, and with respect to these holdings establish the same trust that you did in connection with your holdings at the time you went on the Atomic Energy Commission?

Mr. McCONE. Well, I would be perfectly willing to submit to the chairman or to anyone he would designate a list of my holdings for review, and I could do that as promptly as I could assemble them.

I see no—I have no objection to the establishing of an irrevocable trust if there is reason to do so. I felt the peculiar wording and restrictions of the Atomic Energy Act made it advisable to establish that trust at that time. I do not think that situation is existent in connection with this office.

Senator CASE. Of course, that is the act of 1946, I believe, which established that, and it was not a 100-year-old statute in that connection. It may be a 100-year-old statute with respect to defense officials, but the Atomic Energy Act was 1946, I believe.

Mr. McCONE. I think so.

Senator CASE. Thank you very much, Mr. McCone.

Thank you, Mr. Chairman.

Chairman RUSSELL. Mr. McCone, do you own any stock holdings in any airplane manufacturing company?

Mr. McCONE. No, sir.

Chairman RUSSELL. Senator Bartlett.

Senator BARTLETT. Mr. McCone, do you happen to know where States Marine has its headquarters?

Mr. McCONE. In New York.

Senator BARTLETT. Joshua Hendy is exclusively engaged, Mr. McCone, in the shipping business?

Mr. McCONE. That is correct.

Senator BARTLETT. And principally in carrying ore to the South American trade and operating a fleet of oil tankers?

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Mr. McCONE. No. It has, in addition, a coastwise and intercoastal trade in which—principally in the movement of chemicals.

Senator BARTLETT. Under what name?

Mr. McCONE. Joshua Hendy.

Senator BARTLETT. How many ships are engaged in the intercoastal trade?

Mr. McCONE. Three or four.

Senator BARTLETT. I believe you said, Mr. McCone, that U.S.-flag tankers cannot compete other than in the intra- and inter-coastal trade. Is this a literally correct statement?

Mr. McCONE. I think it is correct, yes. The differential in costs between the American-flag operation and a foreign-flag operation is very large.

Senator BARTLETT. So U.S.-flag tankers only carry oil from one American point to another?

Mr. McCONE. Very, very few American-flag tankers are ore carriers and operate in the offshore trade for competitive reasons.

Senator BARTLETT. It is my recollection that you informed Senator Smith that her information about the dollar value of your holdings of Standard Oil of California may have been on the conservative side, but that her statement to the effect that you are the second largest individual stockholder in that company is erroneous because there are several others who are larger stockholders?

Mr. McCONE. Yes. I imagine there would be a great many. My holdings are rather nominal as compared with some accumulations of stock of that or other major oil companies.

Senator BARTLETT. I am glad for the addition.

Mr. McCone, do you know if Standard Oil of California is a member of the Arabian-American Oil Co.?

Mr. McCONE. Yes, it is.

Senator BARTLETT. And, of course, all of us have heard that this company, operating in the Middle East, has at various times intervened or participated or interferred, whatever word should properly be applied, in the operations of governments in those areas and, so far as I know, these are merely allegations, but they have been printed and discussed. Would you have any comment to make upon that situation?

Mr. McCONE. No, I would have no comment because I have not personally read or heard of those allegations. In my trips to the Middle East, I have observed that the Aramco people handled their relationship with the Governments of Arabia and Bahrein Island in a very satisfactory way, so reported to me. I don't know of any interference.

Senator BARTLETT. There are five companies in the American-Iranian Oil Co.?

Mr. McCONE. I think there are four. I think Aramco is composed of Standard of California and Texas Co., who originated the venture, and have been joined by Standard of Jersey and Mobil Oil.

Senator BARTLETT. And of these four companies, you hold stock in——

Mr. McCONE. In Standard of California only.

Senator BARTLETT. Only?

Mr. McCONE. Yes.

Senator BARTLETT. Mr. McCone, as was the case with Senator Jackson, I, to my own disappointment, was required to leave the

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committee room about the time that Senator Symington started to question you, and so a couple of questions here I would like to put to you may be repetitive, and I hope you will bear with me.

I should like to refer especially to the sixth and last question submitted by Senator McCarthy in the statement which he presented this morning, that question being this:

What are the facts with regard to the charge of the nominee's attempt to have the scientists fired at the California Institute of Technology?

Mr. McCONE. Senator, as I explained this morning, my communication with the scientists at the California Institute of Technology over the incident with which you are familiar was directly with them, not with the university or not with them through the university.

The letter which I wrote was addressed to Dr. Lauristen and his reply was directed to me, and my file copy of the letter does not indicate that copies of the letter were sent to either the board of trustees or the president of the university. So there was no official transmission to the board of trustees of my communication.

I preferred then to take the matter up directly with Dr. Lauristen and his group. I made no official request to the board of trustees to fire anybody, and none were fired, to my knowledge.

Senator BARTLETT. May I pursue that one step further. Did you make any unofficial request?

Mr. McCONE. No, I made no unofficial request. I would be less than frank with you if I did not say that there were a few people that knew that I was quite annoyed and disturbed at the position that had been taken by them.

But I made no official or unofficial request that they be discharged.

Senator BARTLETT. You expressed and voiced your displeasure but did not try to cause them to lose their jobs?

Mr. McCONE. That is right.

Senator BARTLETT. Now on page 8 of Senator McCarthy's statement reference is made to that letter you wrote to Dr. Lauristen, October 15, 1956, in which you state that:

"The National Academy of Sciences has issued a report this year completely discounting such danger." And "such danger" has to do with the radioactive fallout from H-bomb tests.

Do you know, Mr. McCone, if the National Academy of Sciences has changed its views relating to this since then?

Mr. McCONE. I do not know of any official statement. They put out a report in the spring of 1958 that dealt with the question of the genetic and other effects from radioactive fallout resulting from reference to testing, and, as I recall the report, it tended to minimize the effects at the level of radiation, at the then existing level of radiation or the level to be expected from the tests that had taken place or might be expected if tests were continued at about that level.

Senator BARTLETT. That is only the tests?

Mr. McCONE. It relates only to tests, yes, as I recall it.

Now bear in mind——

Senator BARTLETT. Five years ago, I understand.

Mr. McCONE. Of course, this subject has been reviewed and rereviewed many times, as Senator Jackson knows, and there are wide differences of opinion among scientists, and sincere differences of opinion, concerning the effects of radioactive fallout.

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Senator BARTLETT. But there is no difference of opinion, is there, among scientists as to the dangers that would be inherent in radioactive fallout in case one of these bombs was to be dropped on any nation?

Mr. McCONE. No, I think there is pretty general agreement that there will result an area of intense radioactivity which would be lethal, and the extent of that area is dependent upon the atmospheric conditions and the wind and all the rest.

But there is no difference of opinion among scientists as to the fact that there would be serious radioactive consequences from an atomic exchange.

Senator JACKSON. Would the Senator yield for a moment? I have to go to the Atomic Energy Committee.

Senator Stennis asked me, Mr. Chairman, who is unavoidably detained at a meeting, to state that he is sorry he cannot be here for the afternoon and that he wanted the record to show that he supports Mr. McCone's nomination.

Excuse me.

Senator BARTLETT. Fine enough.

Now, Mr. McCone——

Chairman RUSSELL. Let me say, if you will pardon me, Senator Bartlett, that if we conclude all of the examination—I am not going to cut anybody off, nor will we muzzle Mr. McCone in any statement he desires to make—if we can conclude the evidence this afternoon, I hope that we may vote on these nominations today.

If we cannot, we will vote on them at some later time.

Senator JACKSON. Mr. Chairman, I just want to get away for a little bit. We have General Lemnitzer over in connection with atomic weapons testing, and I feel I should go for just a little bit, and I will be back.

Chairman RUSSELL. Thank you, Senator.

You may proceed.

Senator BARTLETT. When Senator Smith was engaging in colloquy with you, Mr. McCone, she put these words to you, and I quote:

> It has been alleged to me that the CIA has or is supporting the political activities of certain ethnic groups in this country such as the Polish and Hungarian groups. Is this true? What comment do you have on this allegation?

That was the conclusion of Senator Smith's questions there, and your reply was that you had no comment to make. Later on, I believe that you said that the basic purpose of the CIA is to collect intelligence data, and to carry out other responsibilities imposed upon it, the Agency, under the act.

I would like to ask you this question.

Whether or not you would care to comment on it is up to you, of course.

Would those other responsibilities to which you referred include an activity, would those responsibilities possibly include an activity of the nature referred to by Senator Smith?

Mr. McCONE. I think in the activities of the Agency, and without confining it to this particular question of Senator Smith, I think I would feel compelled to act under the direction of the President in assisting, to the extent the Agency is competent, in carrying out his program of conducting affairs in the best interests of this country.

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I think I would pursue that so long as I felt that it did not involve a violation, a clear violation of my oath of office, which is to uphold the Constitution. If a conflict arose with respect to that oath of office, naturally, I would have to refuse or resign.

Senator BARTLETT. I want to be sure, Mr. McCone—thank you for that very helpful statement—additionally, I want to be sure that I understand you absolutely there. As I gather from what you said, in an activity of this kind, if it were to be undertaken, this would be a policy determined not by the CIA, but by higher authority?

Mr. McCONE. Naturally, it would have to be determined by others.

Senator BARTLETT. That is all, Mr. Chairman.

Chairman RUSSELL. As a matter of national policy, and speaking as a citizen and not as a nominee for this position, Mr. McCone, do you see anything immoral or wrong about any agency of this Government undertaking to encourage ethnic groups in this country that have brethren behind the Iron Curtain to look at matters from the standpoint of this country rather than of the Soviet Union?

Mr. McCONE. No, sir; I do not. I think it very important and I think it becomes increasingly important as we realize how energetic the Communists are in trying to influence the ethnic groups and labor groups and student groups throughout the world in indoctrinating them and capturing them into the Communist orbit.

Chairman RUSSELL. Our enemies are certainly trying to seek to destroy us in every possible way, appealing to all ethnic groups in any way they can get their hands on them. I do not see any reason why we should have our hands tied.

Senator Bush?

Senator SALTONSTALL. Will the Senator yield? I would like just to supplement what the chairman has said. Is it not true, Mr. McCone, in your understanding of the CIA, that any work on the ethnic groups in this country would not be within the province of the CIA, in any event; am I correct in that?

Mr. McCONE. I cannot answer that, Senator.

Senator SALTONSTALL. Perhaps that should not be answered.

Senator BUSH. Mr. Chairman, I want to congratulate President Kennedy upon this nomination. I think it is one of the best that he has made, and I want to congratulate Mr. McCone upon being willing to accept this very heavy burden of responsibility.

It is a heavy burden, and it requires a man of great integrity and courage and trustworthiness and ability, demonstrated ability.

I know of my own knowledge of Mr. McCone that he is the man that possesses these qualities to a marked degree, and I take great comfort in this nomination for that reason.

Furthermore, I know him to be a deeply religious man and one who understands better than most, and I believe as well as any, the nature of the Communist menace with which we are faced. So I believe, Mr. Chairman, that he is in all respects which can be reasonably taken into account in connection with this kind of an appointment, that he is fully qualified and will give a wonderful account of himself in this new post with this great responsibility, which he will shortly assume.

I only have one or two questions, perhaps, Mr. McCone. There was some discussion this morning about the President's letter to you in which he referred to your Deputy whom he has designated to serve as

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a member of the Board; later, that he would expect you to delegate to your principal deputy, as you may deem necessary, so much of the direction of the detailed operation of the Agency as may be required to permit you to carry out your primary task as Director of Central Intelligence.

My recollection is that General Cabell is the deputy at the present time.

Mr. McCONE. That is correct.

Senator BUSH. Am I correct in my recollection that he is resigning sometime in the near future?

Mr. McCONE. Yes, the 31st of January, he is retiring from service.

Senator BUSH. Will the selection of your deputy be one of your chief responsibilities?

Mr. McCONE. By law the appointment of the Deputy Director is a Presidential appointment, to be confirmed by the Senate.

Senator BUSH. So you will have the responsibility, then, of recommending the Deputy to the President, is that correct?

Mr. McCONE. I think I will have the privilege of recommending him.

Senator BUSH. Have the privilege?

Mr. McCONE. Yes.

Senator BUSH. I have observed that in the CIA either the Deputy or the Chairman has always been a high ranking military person. General Bedell Smith, I believe, was the Chairman of the CIA, himself, or the Director of the CIA, himself, but, otherwise, when we have had a civilian director, we have usually had a high ranking military officer there, which has always impressed me favorably.

Would you care to tell the committee whether you feel disposed to recommend the appointment of a military person for this job of Deputy or not?

Mr. McCONE. I think, first, because of the responsibilities that are going to be thrown on this man, for the reasons mentioned in this letter, which are greater perhaps than they have been in the past, we will want to search out the most competent and able man that we can get and who is willing to undertake the job, and it will be no easy job.

Now, if that is a military man, I think that would be a most satisfactory arrangement. There are a number of reasons for this.

In the first place, military men are usually well trained in administrative responsibilities, and this will be a big administrative task.

And, secondly, there is an intimate interrelationship between the Agency and the Military Establishment.

And, finally, by law, in the event of war, a very substantial section of the Agency goes into the military command. There is no requirement in the act that calls for a military man as the alternate to the Director. The act states that if the Director is a military man, then the Deputy must be a civilian, but it does not state the vice versa of that.

I would hope, in summary, I would first look over the available military officers to see if one might be available who had the competence and the qualifications for the job. That would be my preference.

Senator Bush. I have no other questions.

Chairman RUSSELL. I may say to you, Mr. McCone, for whatever it may be worth, I think it is highly desirable for a civilian to have

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someone who has had training in military intelligence to assist him in this Agency.

If you can possibly get a military man that you can work with, I think what the act says is that if the Director be a military man, he should have a civilian Deputy. We have had military men directors on a great many occasions.

Admiral Hillenkoetter—I do not guarantee that pronunciation—was the Director for a long time and General Bedell Smith was required to have a civilian specifically, but I am sure we have military men who have the training and patriotism that would fit them into this position very well.

Senator BUSH. Mr. Chairman, I do not mean to interrupt, but I would like to add my own comment entirely in support of what you have just said on that, and to observe that I think it has been wonderful since I have been here, one of the things that has impressed me most has been the quality of our high ranking military men that come to the surface after 30 or more years of service in the military organizations.

I do not think we bring up in any walk of American life finer citizens, men of greater ability, versatility, dependability, patriotism, and so forth, than in the men that eventually come to the top in our services.

So I join the chairman in hoping that you will continue in the tradition, if it is that, and find a man in the services to be your deputy, in the military services.

Chairman RUSSELL. Senator CANNON?

Senator CANNON. Thank you, Mr. Chairman.

Mr. McCone, there was one point raised this morning that left some confusion in my mind, and I would like to correct the record on it.

When Senator McCarthy referred to a quotation of Hansen Baldwin in which he said, "It should be clear that intelligence is too important to be left to the unsupervised," I gathered the impression from the answer that actually the CIA was supervised by some agency, and I do not believe that is correct.

I wonder, would you care to state is there any agency that supervises, exercises supervisory control over the CIA?

Mr. McCONE. No, there is none. I am sorry if my response gave that impression. There is none.

Senator CANNON. I think that the inference was made that the National Security Council, perhaps, exercised some supervisory power, but they simply recommend, make recommendations to the President, is that correct?

Mr. McCONE. Yes. By law the Agency reports to the National Security Council, and the National Security Council takes a very considerable cognizance, it has in the past, over the operations of the Agency. But I wouldn't term it that that was supervisory. However, the point that I was making was that in many fields of our activities, our foreign activities, there is established and under this administration and the past, proper supervisory arrangements of an interdepartmental nature.

Senator CANNON. Now, Mr. McCone, you stated a few moments ago that you would feel obliged to follow the instructions and directions of the President, unless it was clearly in violation of your oath to support and defend the Constitution of the United States. Senator McCarthy raised the point on page 4 of his statement concerning the legal or constitutional justification for certain actions, and in that

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connection I would like to ask you whether or not you feel that if the CIA were to interfere or to assist in the overthrow of the government of any foreign country, that would be a violation of your constitutional authority?

Mr. McCone. Well, that is an answer, a rather difficult hypothetical question to answer, Senator. I think that there again it would really depend upon the actions that might be indicated in support of the President's foreign policies and desired by him and his determination to conduct this foreign policy to meet the best interests of the United States and our determined effort to fight back the intrusion of communism.

I would be inclined to support his efforts in this regard based on his Presidential prerogatives and his Presidential authority. It would have to be quite an extreme case, I should think, before I would feel that it was a violation of constitutional rights of the executive branch of the Government.

Senator Cannon. But certainly you would not feel that you had the authority to take any such actions without specific approval and direction of the President?

Mr. McCone. Oh, that is correct.

Senator Cannon. And that short of that, your authority would be limited solely to the collection, evaluation and dissemination of intelligence-type data, intelligence type of information?

Mr. McCone. That is correct.

Senator Cannon. I was concerned about Senator McCarthy's statement that the CIA takes the credit for the overthrow of Dr. Arbenz as President of Guatemala in 1954. Is that a recognized fact that CIA does take any such credit so far as you know?

Mr. McCone. Not that I know of, no.

Senator Symington. Will the Senator yield?

Senator Cannon. I will be happy to yield.

Senator Symington. They would run into direct conflict with other agencies of Government in doing that. The Ambassador told me he took direct pleasure in being largely responsible. If it was a good thing to do, lots of people would take credit for it. If not, perhaps it would end up in the CIA.

Senator Cannon. I also note the statement wherein CIA supposedly helped equip an army in the south to remove Souvanna Phouma. Now do you know of any action taken by the CIA in helping equip an army in the Vietnam situation?

Mr. McCone. Not by the CIA; no. There was a great deal of foreign military aid went into that program.

Senator Cannon. So I understand, but I am just trying to delineate and define in my own mind at least where the authority lies in the CIA and what your response as to that authority is.

Mr. McCone, getting back to this professor situation, I think you have already indicated that you took no direct action and you made no official communication and no official request that these professors be discharged from their duties, and you stated to Senator Bartlett that there were, of course, people who knew you were unhappy with them. Did you, informally, at least, make an unofficial request, and I am just saying this to try to clarify the record, make an unofficial request or suggestion to anyone in authority at any time that these people should be discharged because of their actions?

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Mr. McCONE. No, I did not.

Senator CANNON. No further questions.

Senator BEALL. Mr. Chairman, it hasn't been my pleasure to have known Mr. McCone before today, but I have been certainly very much impressed by what members of this committee who have worked with him have had to say, particularly Senator Symington who has worked with him.

I wasn't a member of the Senate in 1950 and 1951. I was a member of the other body. At that time we in west Maryland were very much concerned about an awarding of a contract to Kaiser-Frazer for the construction of the C–119. I believe you took it away from—you awarded the contract, didn't you, to Kaiser-Frazer?

Mr. McCONE. I approved the award at that time.

Senator BEALL. Fairchild at Hagerstown was making the C–119.

Mr. McCONE. That is correct.

Senator BEALL. Did you instruct them to turn their engineering personnel, the blueprints and so forth over to the Kaiser plant at Willow Run?

Mr. McCONE. Not their personnel but the blueprints, which were the property of the Air Force

Senator BEALL. But Kaiser-Frazer did take some of the personnel?

Mr. McCONE. As I recall it, and this was a long time ago, as I recall it they entered into a mutual assistance contract of some kind which may have required some personnel.

Senator BEALL. Wasn't it a fact that Fairchild were building the C–119 for $260,000?

Mr. McCONE. Just about.

Senator BEALL. And Kaiser-Frazer charged $1,200,000?

Mr. McCONE. Information of that nature came out in the June 1953 hearing, but I left the Air Force prior to the time that Kaiser-Frazer production had started, between October 1951 and June 1953 I did not have the information on costs and so forth. But when this hearing which was at my own request was held by a subcommittee of this committee, information came out that the then production of Kaiser-Frazer plant was in the order of—it was a very high figure, and I imagine that you got that figure from the record. I haven't looked at the record, but it sounds familiar to me.

Now, there are many factors that enter into that. Kaiser-Frazer was getting started and the Hagerstown plant had been going for several years, so there was a point on the learning curve. All of those things were a part of the comparison. I am not in a position to comment on the performance of Kaiser-Frazer except that those who testified for the Air Force and who were familiar with it seemed to feel that the costs were quite high, disappointingly so.

Senator BEALL. Do you remember writing a memorandum warning the costs of the C–119 being produced by Kaiser-Frazer might become loaded with costs properly attributable to Kaiser's automobile enterprise?

Mr. McCONE. Yes, I wrote that memorandum with respect not only to Kaiser-Frazer but to several others. The circumstance was this. We were going through the transition of peacetime economy to really a wartime economy, and we were utilizing commercial plants, automobile plants, and engine plants for the manufacture of airplanes and engines and all the rest, and I was fearful that the cost of the transition would be loaded on our contracts, and therefore, I wrote a

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memorandum to the Chief of Staff of the Air Force and the Chief of the Air Materiel Command urging that in negotiating these contracts and in setting up their audit staffs and so forth that they be very careful that we didn't pay—that the costs of the Government were not loaded with costs properly chargeable to their commercial operations.

Senator BEALL. But you didn't realize that between December the 5th and the 15th, that this possibility existed at that time, did you?

Mr. MCCONE. Your question, sir?

Senator BEALL. You did not realize between December the 5th and December the 15th that this possibility existed. You discovered that later?

Mr. MCCONE. Yes, I realized it right along.

Senator BEALL. Did you?

Mr. MCCONE. Because it was obvious to me, having had a background in the manufacturing business. It was obvious to me. It was on January 5, as I recall it, that I wrote the memorandum.

Senator BEALL. Thank you, Mr. Chairman. That is all. Thank you, Mr. McCone.

Chairman RUSSELL. Any further questions?

Senator SYMINGTON. I would make an observation, based on some testimony here. To the best of my recollection some of the people who have been directors of Central Intelligence have had no intelligence experience. As I remember the first was Adm. Sydney Souers. Whether he was in ONI or not I do not remember. If he was, then he had some intelligence experience as a part of the Navy. The second one, I believe, was either Gen. Bedell Smith, another military man, or Admiral Hillenkoetter.

Chairman RUSSELL. Hillenkoetter was second.

Senator SYMINGTON. To the best of my knowledge, the careers of neither of those men were primarily intelligence. They may have had it because of changing assignments. I do know one former head of the Central Intelligence Agency, General Vandenberg, who was taken from the military into Central Intelligence and objected bitterly, because he hadn't had experience in that field. It came up again when he was considered to be the Vice Chief of Staff and later the Chief of Staff. He did not feel that he was at home in intelligence, because of lack of experience. He was a great chief.

Senator CASE. What about Wild Bill Donovan?

Senator SYMINGTON. I don't think he ever was head of Central Intelligence.

Senator CASE. Not after CIA was created statutorily. He directed some activities later.

Senator SYMINGTON. Inasmuch as Mr. McCone has been in positions as sensitive as the Atomic Energy Commission, constantly in matters that had the highest classification, I would be almost certain in my own mind that he had had more experience in this field than General Vandenberg had prior to his taking the position.

Mr. McCone, I would like to ask a couple of questions here without the slightest criticism of anybody that asked any questions in this hearing, of course, and I know you know that, and I know you have not, either. Such questions are the purpose of these meetings.

Mr. MCCONE. That is right.

Senator SYMINGTON. Some of my colleagues who asked the more detailed questions are ones I respect as much as any Members of the

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Senate. This is the third time you have appeared before the Senate. is it not?

Mr. McCone. That is correct.

Senator Symington. Have you ever done anything illegal in business you know of?

Mr. McCone. No, sir.

Senator Symington. Have you ever done anything unethical in business that you know of?

Mr. McCone. No, sir.

Senator Symington. When you were in private business you had partners and/or stockholders, didn't you?

Mr. McCone. That is correct.

Senator Symington. And you did your best, without doing anything illegal or unethical, to earn a profit, for yourself and your stockholders and partners, is that correct?

Mr. McCone. That is correct.

Senator Symington. Now, it is still legal in America, if not to make a profit, at least to try to make a profit, is it not?

Mr. McCone. That is my understanding.

Senator Bush. It is illegal to keep it.

Senator Symington. The Senator from Connecticut says it is only illegal to keep it, and I believe some of your testimony has given practical effect to that observation because you said you were being taxed 95 percent of your profits?

Mr. McCone. During wartime.

Senator Symington. Didn't you say 95 percent of some of your profits were taxed?

Mr. McCone. That is right.

Senator Symington. So I think the somewhat jocular observation of my friend from Connecticut nevertheless has some merit.

Now the Senator from South Dakota, who is one of the most informed men I know, says that your Deputy Director of Central Intelligence has to be confirmed by the Senate.

Mr. McCone. That is my understanding, yes.

Senator Symington. And inasmuch as that is your understanding, and inasmuch as the chairman of this committee at least implied, if he didn't actually state that the legislative history, and sense of the Congress, was that he should be a military man, I would hope that you would give that consideration. I agree that because of the nature of your work and the relative proximity of the two organizations, the Defense Department and Central Intelligence Agency, which sometimes have not worked together entirely satisfactorily, and inasmuch as you said something I did not know before, namely, that in time of war a large part of your apparatus goes into the Defense Department, I would hope that one of the men such as Senator Bush referred to, with long experience in the military, could be your deputy.

Now my final question is this. This is your third time before the Senate. You never had a vote against you yet in the two previous times you came before the Senate. Do you know of any reason of any kind, direct or indirect, which would prevent you from handling this position in accordance with the wishes of the President and your oath of office?

Mr. McCone. No, I know of none.

Senator Symington. I have no further questions, Mr. Chairman.

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Chairman RUSSELL. Does any other member of the committee have additional questions? Senator Cannon.

Senator CANNON. Mr. Chairman, one question has been raised in my mind as a result of Senator Beall's question. Why was the contract taken from Fairchild and awarded to Kaiser if you anticipated that costs might go up by reason of conversion from automobile work and no experience?

Mr. McCONE. Well, the reason for it—there was no contract taken away from Fairchild. What happened was that we were going through a vast expansion of our aircraft production program, and the agreed production needs for this particular type of airplane was several times the all-out, 24-hour-a-day capacity of the Hagerstown plant of Fairchild. Therefore, the problem that we faced was whether to open up a second plant under Fairchild management in Chicago, Omaha, or elsewhere, or to take a second source such as Kaiser-Frazer. The recommendations of the Air Materiel Command and the Air staff which I approved was to select Kaiser-Frazer, who had a large plant at Willow Run, and we had a recapture clause in our contract so we could repossess it in the event of an emergency, and this appeared to us to be a better foundation for our expansion program than the opening up of the Chicago plant. And there were various factors, labor shortage and all the rest that came into it. But the point, Senator Cannon, is that there was no contract taken away from Fairchild.

Senator CANNON. Fairchild did continue?

Mr. McCONE. Fairchild did continue.

Senator CANNON. To operate at their capacity?

Mr. McCONE. At their capacity; that is right.

Senator CANNON. Thank you very much. Thank you, Mr. Chairman.

Chairman RUSSELL. If no other member of the committee has any further questions, Mr. McCone, we will excuse you for the time being.

Mr. McCONE. Thank you very much, sir.

Chairman RUSSELL. The committee will go into executive session here to determine what further steps should be taken.

(Whereupon, at 4:15 p.m., the committee went into executive session.)

(On Monday, January 22, in executive session, the committee unanimously voted to report favorably to the Senate the nomination of Mr. McCone to be Director of Central Intelligence.)

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APPENDIX I

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., January 19, 1962.

Hon. RICHARD B. RUSSELL,
Chairman, Armed Services Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR RUSSELL: I am happy to respond at the Armed Services Committee's request to the statement Senator Eugene J. McCarthy made on January 18, 1962, at the opening of the committee's hearings on my nomination to the position of Director of Central Intelligence. I shall respond directly to the specific questions posed by Senator McCarthy at the end of his statement, but as other portions of the statement were considered during the hearings I shall also set forth my position in regard to them.

The first question asked if the Central Intelligence Agency is to be reorganized and if so in what respects. I have been and I am studying the organization of the Agency very intently. The present pattern of organization of the Agency is the result of years of study by competent people, both within the Government and outside consultants, and in my opinion it is not a bad pattern of organization. However, I believe that in all departments of the Government there is an evolution in management procedures and opportunity for improvement, so I think that some changes will be indicated in the Agency organization. I would propose to discuss any important changes with our congressional subcommittees.

During the hearings before your committee I read into the record a letter from the President concerning the scope of the responsibilities he has asked me to assume, and the President stated therein that he would expect me to delegate to a principal deputy as I may deem necessary so much of the direction of the detailed operation of the Agency as may be required to permit me to carry out the primary task of the Director of Central Intelligence. This, of course, I intend to do, and while I will have overall responsibility for the Agency, I am studying what delegations of authority should be made to the Deputy Director of Central Intelligence.

Senator McCarthy's second question asked what bearing such changes would have upon the duties of the head of the Central Intelligence Agency and upon the operation of the Agency. Any changes made in Agency organization will have no bearing on the duties of the Director of Central Intelligence, the scope of whose responsibilities is set forth in the Presidential letter mentioned above. The authority of the Director has been neither enhanced nor diluted, and I believe the purpose of the President's directive is to make clear that the Director of Central Intelligence is his principal intelligence officer to exercise the dual role set forth in the law, to be responsible for the direction of the Central Intelligence Agency itself, and to assure the coordination of the intelligence community as a whole. The one change that has been made is in connection with the coordination function. The Director of Central Intelligence is Chairman of the U.S. Intelligence Board, which is composed of the heads of all the intelligence components of the Government, and I have placed the Deputy Director of Central Intelligence on that Board to represent the views of the Central Intelligence Agency in connection with any matters considered by the Board. It appeared to me that if I served as Chairman and as such as the President's representative and the Deputy as the Agency's representative was the advocate of the Agency's viewpoints, I would be in a position to take a more objective point of view. This new arrangement was approved by the President in the letter referred to above.

Senator McCarthy's third question asks for my views as to the authority for some of the actions attributed to the Central Intelligence Agency in the field of foreign affairs within recent years. Many events have been attributed to the Central Intelligence Agency over the years, and it would be impossible for me to have the facts on these matters, but I certainly do not accept that because they are attributed to the Central Intelligence Agency the Agency is responsible for them. The Senator's question appears to go to the basic juridical or constitutional authorities of the executive branch, and this involves profound legal questions which, since I am not a lawyer, I do not feel competent to debate.

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It is my understanding, however, that the President has wide powers in the field of foreign relations and within the framework of the Constitution is empowered to do what he deems to be necessary to protect and promote the national interest. At the present time, in my opinoin, the national interest is best served by taking steps to deter the encroachment of communism. As provided by law the Central Intelligence Agency operates under the direction of the National Security Council which is advisory to the President and of which he is Chairman and, therefore, it is but one of the arms in the complex of establishments which are involved in the President's conduct of foreign policy. I intend to carry out to the best of my ability all duties assigned, and I must assume that no such assignment would cause me to violate my oath of office to support and defend the Constitution.

Senator McCarthy's fourth question concerns my judgment as to methods which can be justifiable used by the Central Intelligence Agency. The very nature of the question is such that I believe I cannot respond to it, particularly in the light of the responsibility imposed upon me by law to assure the protection of intelligence sources and methods from unauthorized disclosure.

Senator McCarthy's fifth question was to the extent of my involvement, if any, in what had been described or reported as "leaks" from the Atomic Energy Commission with reference to the moratorium on nuclear testing. I know of no instance where I personally or any of the Commissioners were charged by anyone with leaking anything either on this subject or any other subject of a classified nature. There were leaks in this area, but there were none that were attributed to the Atomic Energy Commission.

Senator McCarthy's sixth question inquired as to the facts with regard to the charge that I attempted to have scientists fired at the California Institute of Technology. Ten scientists at Cal Tech signed a statement concerning suspension of nuclear testing. I differed strongly with their position and felt that the manner in which the statement came out tended to imply that it was an official Cal Tech position. I wrote my letter stating my strong disagreement to one of the 10 scientists directly, Dr. Thomas Lauritsen. To the best of my recollection I did not send copies of this letter to the university or officials thereof, and the file carbon which I retained does not indicate any distribution. I would be less than candid if I did not say that my views concerning this matter were known to many people. However, I did not officially or unofficially request the dismissal of any or all of the scientists by the institute, and none were dismissed as a result of any action by me.

The general thrust of Senator McCarthy's statement was the need for greater congressional supervision of the Central Intelligence Agency, and early in his statement he said there is no regular or normal procedure in existence or in use today by which committees of the Congress are consulted or informed of the Central Intelligence Agency's activities. There are, of course, subcommittees of the Armed Services Committees of both the Senate and the House, constituted as CIA subcommittees, and there are subcommittees of the Appropriations Committees of both the Senate and the House, constituted to consider the Central Intelligence Agency's appropriations matters. The Central Intelligence Agency has been at all times responsive to the calls of these subcommittees and in addition has brought to their attention matters the Agency felt should properly be considered by them. I will continue this policy and this relationship with these subcommittees.

Senator McCarthy's statement quoted a comment by Hanson Baldwin that intelligence is too important to be left to the unsupervised. In addition to the relationship with the subcommittees of the Congress set forth above, the Agency reports to the National Security Council and is subject to direction by the National Security Council. There are precise interdepartmental arrangements for consideration of certain of the Agency's activities so that the President and the Secretaries of State and Defense can apply policy guidance and be adequately informed.

Senator McCarthy also sets forth a quotation from Walter Lippmann stating that the Central Intelligence Agency has been much too often an original source of American foreign policy. I do not consider that the Director of Central Intelligence is a policymaking position. The chief function of the Agency is to obtain all possible facts from all sources and after proper evaluation disseminate them to the President and other appropriate policymakers. I might be asked my personal views, and if so I would feel free to give them, but do not conceive that it is proper for the Director of Central Intelligence to volunteer in regard to questions concerning the national policy. Within the intelligence structure there are, of

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course, from time to time policy questions concerning organization or methods, but these are not related and therefore must be clearly differentiated from matters of national policy and are settled internally through the mechanism of the U.S. Intelligence Board.

I trust the foregoing will serve the needs of the committee.

Yours very truly,

JOHN A. McCONE, *Director.*

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EVENTS INCIDENT TO THE SUMMIT CONFERENCE

HEARINGS

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

EIGHTY-SIXTH CONGRESS

SECOND SESSION

MAY 27, JUNE 1, 2, 1960

Printed for the use of the Committee on Foreign Relations

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Note.—Sections of these hearings have been deleted in the interest of national security. Deleted material is indicated by the notation "[Deleted]."

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FOREWORD

On May 24, 1960, the Committee on Foreign Relations met in executive session and, without objection, agreed to hold hearings with regard to the recent summit conference and events incident thereto.

It was decided that Members of the Senate who were not members of the committee would be permitted to attend the hearings but, according to committee custom, not to question the witnesses. Pursuant thereto various Members of the Senate did attend the sessions as observers.

It seemed to me that it might be useful to the committee members, as well as to the other Members of the Senate, to have the staff compile a background document containing materials relevant to the planned inquiry. Such a compilation was published as a committee print on May 27, 1960, and is also printed herein as appendix 1.

The committee's hearings commenced on May 27 when it heard testimony, both morning and afternoon, from Secretary of State Christian A. Herter. The committee also heard Mr. Allen W. Dulles, Director of the Central Intelligence Agency, on May 31; Dr. Hugh L. Dryden, Deputy Administrator, National Aeronautics and Space Administration, on June 1; and Secretary of Defense Thomas S. Gates on June 2.

All of the above hearings were held in executive session. The testimony, however, was subsequently released after the deletion by representatives of the executive branch of that material the publication of which the executive branch believed might jeopardize the national security of the United States. None of the Central Intelligence Agency's testimony is being published. Where the deletions occur is noted in this volume by the designation "[Deleted]".

J. W. FULBRIGHT, *Chairman.*

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EVENTS INCIDENT TO THE SUMMIT CONFERENCE

FRIDAY, MAY 27, 1960

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met at 10:07 a.m., pursuant to notice, Senator J. W. Fulbright (chairman) presiding.

Present: Senators Fulbright, Green, Humphrey, Mansfield, Morse, Long, Gore, Lausche, Wiley, Hickenlooper, Aiken, Carlson and Williams.

Also present: Hon. Douglas Dillon, Under Secretary of State; Hon. Livingston Merchant, Under Secretary of State for Political Affairs; Hon. William B. Macomber, Jr., Assistant Secretary of State for Congressional Relations; Richard Helms, Central Intelligence Agency; Hon. Charles E. Bohlen, Special Assistant to the Secretary of State; Hon. Gerard C. Smith, Assistant Secretary of State for Policy Planning; Capt. L. P. Gray III, USN, military assistant to Chairman, Joint Chiefs of Staff; John P. White, Legislative Management Officer, Department of State.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. Mr. Secretary, we appreciate your willingness to come here today to discuss with the committee the events of recent days and weeks which are related to the collapse of the long-planned summit conference.

Chairman Khrushchev, who for months has promoted a summit conference and invited people throughout the world to believe that an easing of tensions between the free world and the Communist world might be possible, has now dashed those hopes. In a few short hours he destroyed the atmosphere of negotiation which had been built up over long months.

Mr. Secretary, you and the President have been frequent in your warnings in the past that our hopes must not rise too high lest they be dashed to pieces, as they have been, by a swing of the Soviet pendulum.

Despite the fact that there are few in the free world who doubt that the principal onus for the destruction of summit hopes must be borne by Chairman Khrushchev, there are many who believe that our conduct has not been without fault. They believe there are things we might have done, which were not done. They believe there were things which we did, which might better have been left undone—or delayed.

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I have long believed that one of the basic strengths of our democracy is found in our capacity of self-appraisal—our ability to be critical, without destroying our unity.

At this particular juncture of history, this committee is confronted with a most difficult task. Without furthering the objectives of the Soviet Union, we must subject our own activities to careful scrutiny to ascertain whether we have conducted ourselves in a way best calculated to promote the interests of this Nation and to preserve the peace of the world.

I am sure there are some who will feel that any such scrutiny of our own activities can serve no good purpose. As for myself, however, I believe that failure now to review and assess our conduct would be to neglect our responsibility and to lose an opportunity to improve the procedures and the execution of our foreign policy.

I take this occasion, Mr. Secretary, to assure you once again that I am certain there is no intention on the part of any member of this committee to deal with this subject on a partisan basis. We are meeting here not as Republicans or Democrats, but as Members of the Senate who in taking their oaths of office swore, as did you, to uphold the same Constitution.

We are concerned, as you are, that nothing that takes place here in any way damage the conduct of our foreign policy. Above all, we should strive to avoid bitter partisan debate which might prejudice the reasonable and effective conduct of our foreign policy in the future. The motives of participants in events of recent weeks are not at issue. At the same time we seek, as I am sure you do, to conduct this review in such a way that we may learn from the events of the past weeks what we can do to improve our foreign policies and our governmental procedures for their formulation and execution.

I know that the subjects which we will be discussing are most sensitive and delicate. Indeed, we should acknowledge that there is one vast area of executive branch activity which is not subject to the usual type of congressional control, or to the check of public opinion—that is, the operations of the Central Intelligence Agency. Its operations, as similar activities of all great nations, are divorced and separate from the normal standards and the usual restraints that are characteristic of other governmental operations.

There is no point in our pretending that the black arts of intelligence operations do not now, and have not throughout recorded history, involved violations of every commandment. They do. Lying, cheating, murder, stealing, seduction, and suicide are part of the unpleasant business in which all great nations participate—not because they want to, not because they believe these acts are moral, but because they believe such activities are essential to their own self-preservation. This is one of the ugly facts of life in this world.

Acts of espionage are against the law of this Nation as of all other nations. But these acts nevertheless take place, and it does not promote a clearer understanding of international relations to pretend they do not.

COMMITTEE PROCEDURE

Every member appreciates these facts. We hope that the procedures we have set up for the conduct of these hearings will make it possible for representatives of the executive branch to be candid and

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complete because unless there is such candor it is most difficult for the Senate to discharge its responsibilities in the field of foreign policy.

As you know, the committee has agreed that these sessions are to be executive. However, in order to make the maximum amount of information available to the public, which must in the final analysis understand our policies if they are to be supported by the people, we have arranged for a high ranking official of the executive branch to delete from the executive transcript any statements or information which might in any way jeopardize the national security. Should any question arise as to whether such deletions go beyond those necessary to protect the national security, I will appoint a bipartisan subcommittee to consider such questions.

I have urged members to limit their questions to those directly relevant to the recent summit conference and incidents related thereto. Although the committee has not considered fully all witnesses it may wish to hear, I have expressed the personal opinion that there is no occasion for private witnesses to be heard on the matter before the committee.

Finally, as you know, the committee has decided that members should for the first time around, at least, limit their period of questioning to not to exceed 10 minutes each.

FOCUS OF STUDY

It is my hope, Mr. Secretary, that our study can be focused on four principal areas: first, the events and decisions resulting from the U–2 incident; second, the effect of these events and decisions upon the summit; third, the policy of our Government regarding the summit meeting; and fourth, the policy of the United States in the future and possible improvement in the execution thereof.

INTEREST IN HEARING

Mr. Secretary, we have some guests from the Senate who have requested to come as observers. I wish to admonish them that this is an executive session, and that they are not to disclose on their own responsibility anything that takes place in these hearings. I might also call to the attention of the committee that it was noted in the press that Tass, the official governmental news agency of Soviet Russia, was the first applicant to purchase a copy of the transcript which will be later released, so we might keep this in mind. The staff of the committee has compiled a set of background documents on events incident to the summit conference. Those documents will be printed as an appendix to the hearings when they are published.

I suggest, Mr. Secretary, that you proceed with your statement for the information of the committee. The Secretary has a statement prepared which will be the presentation of his point of view.

STATEMENT OF HON. CHRISTIAN A. HERTER, SECRETARY OF STATE, ACCOMPANIED BY HON. DOUGLAS DILLON, UNDER SECRETARY, AND HON. CHARLES E. BOHLEN, SPECIAL ASSISTANT

Secretary HERTER. Mr. Chairman and members of the committee, I appreciate very much your willingness to allow me to make this statement.

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This statement is guided very much as indicated by the chairman in the remarks that he has just made in the next to the last paragraph with regard to divisions; namely, the genesis of the summit; the U–2 incident; the events in Paris and the future.

THE THREAT TO BERLIN

I. The genesis of the summit

In order to understand what happened in Paris, we need to look back over the preceding 18 months.

In November 1958, the U.S.S.R. began a new strategy directed toward altering the situation in Berlin and East Germany in its favor. If the Western Powers refused to give up their present position in Berlin and make West Berlin a so-called free city, the Soviet Union stated its intention to proceed unilaterally at the end of 6 months, turning over full sovereignty to the so-called GDR and thereby confronting the Allies with the alternative of capitulation or resort to force which would be met by Communist force.

Though the strategy as it unfolded proved to be more flexible than its original statement, it is still the official policy of the U.S.S.R. Its force lies in the Soviet ability to threaten Berlin, where we are morally committed, but physically exposed.

The Western Powers, of course, promptly rejected the Soviet proposal and reaffirmed their determination to stand by Berlin.

In the months that followed, while the U.S.S.R. elaborated and pressed its strategy, the Western Powers concerted their plans to meet it. They sought to engage the U.S.S.R. in negotiations, thereby clarifying its intentions and either attaining solutions acceptable to the West, or as a minimum, convincing it that unilateral action against Berlin would not be sound.

ENGAGING THE SOVIET UNION IN NEGOTIATION

It was by no means a foregone conclusion that the U.S.S.R. would negotiate on an acceptable basis. In January 1959 the U.S.S.R. proposed a conference to adopt a peace treaty with the two parts of an indefinitely divided Germany.

The Western Powers continued to maintain that a peace treaty could be negotiated and signed only with a united Germany, hence that the reunification of Germany must be settled first.

They also maintained that the only proper solution for Berlin lay in its becoming the capital of a unified Germany, and therefore, they were unwilling to discuss Berlin as an isolated issue. But the U.S.S.R. had held for some time that reunification was solely the business of the Germans and therefore refused to discuss it.

The West persisted during February and March in its efforts to get the Russians talking somehow. It proposed a meeting of Foreign Ministers, with the prospect of a possible summit meeting when due preparations had been made. The U.S.S.R. had repeatedly indicated a desire for that summit meeting since 1956. Finally, a compromise agenda, which did not prejudice the substantive views of either side, was adopted for a Foreign Ministers' meeting and a date was set in May shortly before the expiration of the original Soviet deadline for meeting their arbitrary demands on Berlin.

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FOREIGN MINISTERS' DEADLOCK

During the intensive preparations for the meeting the Western Powers developed a new version of their basic position regarding Germany, which was submitted at Geneva as the Western peace plan. It consisted in approaching the unification of Germany through a series of stages, thereby offering the U.S.S.R. a chance to adjust its position gradually to the eventual loss of its hold on East Germany which free elections would presumably bring.

The plan showed flexibility and imagination; it appealed to world opinion; but its rejection by the U.S.S.R. was none the less flat.

The U.S.S.R. stuck adamantly to its previously announced proposals for a peace treaty with a divided Germany. Thus, the basic positions remained totally unreconciled.

Finding no progress possible on Germany, the Western Powers and the U.S.S.R. explored the possibility of an interim agreement on Berlin which, without contemplating a basic solution of Berlin as a separate issue, would do something to mitigate difficulties which the U.S.S.R. professed to find there. Though some progress was made in this direction, the U.S.S.R. insisted on language which would have implied the eventual erosion of the Western position in Berlin.

Accordingly, despite the labor of 3 months with only one short adjournment, the Foreign Ministers' meeting ended in deadlock.

HIGH LEVEL TRIPS

The failure of the Foreign Ministers' meeting did not result in a war crisis, however, because a parallel train of events had meanwhile brought hope in a different direction. We took the opportunity of Mikoyan's visit to the Soviet Embassy here in January to arrange informal exchanges of views between the Soviet leader and top U.S. officials.

This was followed in June and July by further visits and exchanges of Kozlov to this country and the Vice President to the U.S.S.R. The fact that these visits took place without public incident and made possible somewhat more realistic communication than usual with the Soviet leadership seemed to offer a possibility—only a possibility, of course—that means of avoiding war and eventually getting Soviet-Western relations into somewhat less dangerous shape might be found by developing these informal contacts.

Accordingly the President decided to go ahead with a move which he and his advisers had long had in mind when the time seemed right. He invited Chairman Khrushchev to visit this country, and the visit was announced before the Foreign Ministers ended their Geneva meeting.

During that visit no progress was made, or indeed expected, on resolving outstanding problems, but a somewhat greater degree of mutual understanding was seemingly attained, particularly on the need to settle international questions by peaceful means rather than by force. There was also a suspension, later publicly acknowledged, of whatever was left of the Soviet ultimatum on Berlin.

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PREPARATION FOR THE SUMMIT

After the Khrushchev visit it was judged feasible and desirable by the Western Powers to move toward renewed discussion, this time at the summit. Some flicker of hope for progress on Berlin had appeared at Camp David, whereas Geneva had ended in deadlock. During his American visit Khrushchev had also evinced an interest in the equally vital field of disarmament, and even though disarmament talks were to start in the Committee of Ten at Geneva it was felt that Khrushchev might reserve his constructive moves, if any, for the summit.

Accordingly, after due consultations among the Western heads of government, an invitation to a summit was sent to Khrushchev and accepted by him and after some difficulty over earlier dates the time was finally set for May 16. This move found broad support in Western public opinion.

There ensued an intensive and protracted series of preparations on the Western side, involving repeated meetings not only of the Foreign Ministers and of NATO but even of the heads of government. Within our own Government we also studied most carefully the possibilities of making progress not only on Berlin and Germany but most particularly in disarmament, as well as other aspects of general Soviet-Western relations.

At the December meeting of Western heads of government a consensus emerged that the May summit might well be only one of a series of such meetings, and that it would be largely exploratory. Some modest progress was hoped for, but no major solutions on any front. But if a beginning could be made, the series of talks, possible in a gradually improving atmosphere over the years, might do substantially more.

SUMMIT PROSPECTS DIMMED

In the first weeks after the Khrushchev American visit there was a general improvement of atmosphere and people began talking, partly in hope, partly in some confusion, about "detente." There were comparatively conciliatory speeches on each side; there was progress in the test ban talks at Geneva; a new Soviet-United States cultural agreement was signed November 21, and on December 1 the United States, the U.S.S.R., and other powers signed the Antarctic Treaty.

But clouds began to gather even then. One of the earliest signs was the strong Soviet protest on November 11 against West German plans to build a broadcasting station in West Berlin. Another was the Khrushchev speech on November 14 which was harder in tone, boasted again of Soviet missile prowess, and began a concentrated attack on Adenauer and the German Federal Republic which later increased and seemed to be a central feature of Soviet presummit tactics. The reason for this attack is still a matter for speculation. Perhaps they thought it would undermine the Western position on Berlin by helping to divide the Western Allies. It had no such effect of course, but naturally rallied us to speak out in defense of our German ally.

Khrushchev as early as December 1 also began repeating his threats to sign a separate peace treaty with East Germany. He repeated these threats in his speech to the Supreme Soviet on January 14

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and in his remarks during his visit to Indonesia and other countries in January. On February 4, the Warsaw Pact powers issued the first formal blocwide commitment to sign a separate GDR peace treaty. Thus Khrushchev's threatening Baku speech of April 25, though it was the most sweeping since February 1959, was only a harsher version of what he had been saying for months before. I shall make full documentation on his speeches available to the committee.

Not until April did we reply at length to this mounting crescendo of Soviet statements. We did so in order to keep the record straight—notably in the speeches of April 4 and 20, which Khrushchev attacked for starting arguments that he in fact had begun.

The unity of the four Western Powers on Berlin meanwhile presumably signaled to the U.S.S.R. that prospects for eroding the Western position or obtaining Soviet terms on Berlin remained slight. President de Gaulle and other leaders were quite firm in discouraging expectations on this front. The NATO Council in Istanbul May 2–4 also reaffirmed the Western position on German reunification and regretted Soviet refusal to discuss specific practical measures of disarmament. Thus as the summit drew near the prospects for important agreement seemed slender, so long as the U.S.S.R. remained committed to driving the Western Powers out of Berlin and to discussing disarmament in terms of general principles rather than concrete steps.

The Western outlook consistently remained, however, that the summit would be worthwhile. It would afford an opportunity for an exchange of views which would clarify each side's position; it might contribute to some reduction of tensions over Berlin and narrow some of our differences on disarmament. It could be at least a small first step in a long process of improving Soviet-Western relations.

U–2 INCIDENT

II. The U–2 incident

On May 1 occurred the unfortunate failure of an intelligence mission. The U.S.S.R. at once seized on it to complicate the approach to the summit. With regard to the role of the U.S. Government in this matter, I cannot hope to improve on the lucid and straightforward account which the President gave to the Nation Wednesday night. I will, therefore, not attempt to go into detail, although I am of course ready to answer questions concerning my responsibilities.

CENTRAL POINTS IN PRESIDENT'S ACCOUNT OF U–2 INCIDENT

Here I would only like to reemphasize four central points which stood out in the President's account:

1. The U–2 program was an important and efficient intelligence effort. We knew that failure of any mission under this program would have serious consequences, but we considered that the great benefit derived justified the risks involved.

2. The decision not to suspend this program of flights, as the summit meeting approached, was a sound decision. Conditions at a later season would have prevented obtaining very important information. There is never a "good time" for a failure of an intelligence mission. We believe it unwise to lower our vigilance because of these political negotiations.

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3. Initial statements by the U.S. Government properly sought first of all to protect the pilot, his intelligence mission, and everything connected with it that might still be kept secret. But when it became clear that plane and pilot were in Soviet hands we believed the Congress and the American people should be given the facts. Thus up to May 7 U.S. statements followed the general line of the cover story, and thereafter were adjusted to the situation as it developed.

4. Since the U–2 system had been compromised, it was discontinued as any other intelligence mission would be in such a case. Announcement of its discontinuance was withheld until the President could convey the fact personally in Paris.

Based on these four points, I believe most Americans will agree that the main course of our actions, given what we knew at any particular time, was sound. In particular, I have doubts that any alteration in the language of U.S. statements would have made any difference in the arbitrary Soviet demands which followed.

KHRUSHCHEV'S ARRIVAL IN PARIS

III. The events in Paris

I should like to give you an account of the major developments at Paris. I shall be as brief as possible, since the details have been widely publicized. But I would like to tell you of those events which in my opinion had a determinant effect there, and particularly those which influenced the decisions of the President.

On my arrival in Paris on Friday, May 13, there was already considerable speculation at the news that Mr. Khrushchev was arriving in Paris on Saturday rather than on Sunday, the day on which the President and Mr. Macmillan were due to arrive.

Mr. Khrushchev's statement on arrival at Orly Airport gave no indication of his subsequent position. It was mild in character and conveyed the distinct impression that he would proceed with the summit conference despite the U–2 incident. Subsequent events showed that this was deliberately designed to conceal his real purpose.

PREMIER KHRUSHCHEV'S CALLS ON PRESIDENT DE GAULLE AND PRIME MINISTER MACMILLAN

On Sunday at 11 a.m., at his request, Mr. Khrushchev, accompanied by Foreign Minister Gromyko and Marshal Malinovsky—which is in itself an unusual procedure which I shall revert to later—called on President de Gaulle at the Elysee Palace.

During this meeting he left with President de Gaulle a memorandum setting forth the conditions which would have to be met by the United States before Khrushchev would be prepared to attend a summit conference. The French delegation provided a copy of this memorandum to the American delegation early that afternoon. The memorandum was subsequently presented by Mr. Khrushchev, without change, as the opening part of his statement to the Four Power meeting on Monday morning, May 16.

After visiting President de Gaulle Sunday morning, Khrushchev called on Prime Minister Macmillan at 4:30 p.m. on the same day and read the same statement of position to him.

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The copy of the statement received from the French delegation was, of course, the subject of immediate consultation with the President and with members of the American delegation as to its significance and meaning.

BINDING NATURE OF DECISIONS MADE PRIOR TO KHRUSHCHEV'S DEPARTURE FROM MOSCOW

It was our general conclusion, subsequently borne out by the facts, that the position and totally unacceptable demands set forth in this document had been drawn up in Moscow prior to Mr. Khrushchev's departure. In this sense it represented a fixed Soviet governmental position from which even Mr. Khrushchev would not have the authority to depart while in Paris.

I might digress here to observe that it had been our experience at previous conferences with the Soviets, at least since the death of Stalin, that the Soviet representative, no matter how highly placed he might be, was bound by the collective decisions on basic policy matters made prior to his departure from Moscow. Any substantive changes in these positions apparently required reference back to Moscow before they could be undertaken.

PRESIDENT'S POSITION AT FIRST CONFERENCE MEETING

I should like to emphasize the opinion which was thus unanimously arrived at in the American delegation, since it bore directly upon the position which the President took at the meeting on Monday morning.

It was out of the question, of course, that there should be any acceptance by the President of the humiliating and arrogant conditions of Mr. Khrushchev. We had very much in mind, however, the importance of showing the world that it was Mr. Khrushchev, and no one else, who was placing this summit conference in peril.

The President, therefore, decided before the Monday meeting that the proper course of action, consonant with the great responsibility which he bore and the seriousness of the issues which were to have been discussed at the conference, was for him not to engage in vituperation with Mr. Khrushchev but to demonstrate the restraint and dignity which was incumbent upon the office he holds and which befitted the leader of a great country.

FIRST MEETING OF SUMMIT CONFERENCE—ANNOUNCEMENT OF SUSPENSION OF U–2 FLIGHTS

In connection with this decision, the President resolved to announce to the conference his previously taken decision to suspend further flights of U–2 aircraft over the Soviet Union.

Although the original intention had been to restrict the first meeting of the conference at the summit to the chiefs of state and heads of government and to their interpreters, the President, on learning that Mr. Khrushchev wished to bring Foreign Minister Gromyko and Marshal Malinovsky, asked Secretary Gates and myself to accompany him to this meeting.

I do not need to describe this meeting in detail beyond saying that Mr. Khrushchev read a statement which, with interpretation, took

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fully an hour. He read this entire statement from a prepared text before him. The first part of this statement was the memorandum which he had left with President de Gaulle, plus certain additions which were in the same vein as regards the United States and which referred to Soviet willingness to hold a summit conference within 6 to 8 months. The major addition was the cancellation of the invitation to the President to visit the Soviet Union.

Apart from his statement, which was made public, the President only once joined in the ensuing discussion—in order to make clear to Mr. Khrushchev and his colleagues that the suspension of the U–2 flights was not merely for the duration of the conference, but for as long as he was in office.

The balance of the discussion at this meeting, which I should point out was the only one during the entire period in Paris at which the Soviets were present, was largely devoted to attempts by President de Gaulle and Prime Minister Macmillan to dissuade Mr. Khrushchev from the irrevocable step of publishing his abusive statement, whose unacceptable conditions would render impossible any conference at the summit, and to Khrushchev's adamant insistence that he would publish this statement and do so at a time of his own choosing. The meeting broke up on the basis of a suggestion by President de Gaulle that the conferees should reflect on this matter for 24 hours and then examine the situation.

BINDING NATURE OF DECISIONS MADE PRIOR TO KHRUSHCHEV'S DEPARTURE FROM MOSCOW

This meeting completely confirmed our conclusion of the night before that Mr. Khrushchev was operating within the fixed limits of a policy set before his departure from Moscow. It is significant in this connection that the statement he issued later that day, Monday, May 16, which was identical with the one he had made at the conference, took no cognizance whatsoever of the discussion at the conference, and in particular of the President's statement concerning the suspension of U–2 overflights.

FINAL PROCEEDINGS IN PARIS

Secretary Herter. The rest of the proceedings in Paris were anticlimactic. It was apparent to all the Western representatives that there was no possibility of a summit conference short of a changed position on Mr. Khrushchev's part. On Monday, Mr. Macmillan visited Mr. Khrushchev in a fruitless effort to persuade him to withdraw his impossible demands.

On that same day, President de Gaulle decided, with the agreement of the President and Prime Minister Macmillan, to call a session of the summit conference for 3 p.m. on Tuesday, May 17, which was after the 24-hour recess which he had proposed on Monday. He sent invitations in writing to the three other participants.

The President, in accepting, made clear his view that acceptance by the Soviet representative would mean that the Soviets had abandoned the demands which the President had previously found completely unacceptable.

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Mr. Khrushchev did not show up at the appointed time for the Tuesday meeting. After a great deal of telephoning between the Soviet Embassy and the French Foreign Office it became clear that he was refusing to attend a summit conference and would only join in what he termed a preliminary meeting to ascertain if conditions could be created for a summit conference. By this reference to "conditions" he obviously meant the acceptance by the United States of all of the conditions he had set forth previously, and indeed he so stated in a written communication to President de Gaulle later that same day.

THE TRIPARTITE COMMUNIQUE

In the light of Mr. Khrushchev's refusal to attend the summit conference, except on terms which all three Western representatives deemed unacceptable, the three Western heads of government met briefly at 9:30 p.m., on May 17 to approve the final tripartite communique, a copy of which I should like to insert in the record, at this point.

The CHAIRMAN. Yes; it may be done.

(The tripartite communique referred to appears on p. 235 of appendix 1.)

TRIPARTITE MEETINGS TO ASSESS SITUATION

Secretary HERTER. Thus the summit conference was ended by Soviet intransigence before it began, without addressing the great international issues with which it was supposed to deal.

The following day, Wednesday, May 18, was marked by tripartite meetings of the Western heads of government and their foreign ministers to consider the situation. In these meetings we sought to analyze the reasons for the Soviet attitude, prospects for the future, and the measures that the three Western Powers might adopt.

PREMIER KHRUSHCHEV'S PARIS PRESS CONFERENCE

This day was also marked by Mr. Khrushchev's press conference, which was fully reported by press, television, and radio. It was apparently an unparalleled performance of vituperation, abuse, and loss of temper. It should be noted, however, that despite the apparently uncontrolled nature of his remarks and actions at this press conference, Mr. Khrushchev was very careful not to commit himself to any specific course of action in the international field.

ANALYSIS OF SOVIET ACTION

We have naturally given a great deal of thought to the reasons for this extraordinary action by the Soviets in coming all the way from Moscow to Paris for the sole purpose of sabotaging the conference.

I should like to say right off that there are many obscure aspects of this Soviet behavior and that we do not know all considerations and factors which went into its determination. We probably never shall. I hardly need to emphasize here to the members of this committee the complete secrecy in which decisions are arrived at in the Soviet Government and in the hierarchy of the Communist Party, which is the effective ruler of that country. It is only possible to try to deduce

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from Soviet actions, after they are taken, the considerations which brought them about. What I give you now, therefore, is at best a tentative estimate of why the Soviet Union behaved as it did, an estimate which may have to be revised in the light of further information and future events.

DECISION TO WRECK CONFERENCE MADE PRIOR TO KHRUSHCHEV'S DEPARTURE FROM MOSCOW

There is one thing, however, that can be regarded as certain: This is that the decision to wreck the conference was made prior to Khrushchev's departure from Moscow. At no point during his stay in Paris—neither when he disclosed his true intentions to General de Gaulle at 11 a.m. on Sunday the 15th nor subsequently—did Khrushchev deviate one inch from his demands that the United States (1) denounce the overflights, (2) apologize to the Soviet Union, (3) punish these flights. Neither the statement made by the President at the one meeting held on Monday nor the serious and responsible efforts of General de Gaulle and Mr. Macmillan in bilateral talks with Mr. Khrushchev before and after the President's announcement of suspension of flights could persuade him to withdraw these unacceptable demands. Indeed, it is a logical deduction from his behavior in Paris that he had no authority to modify his position to any significant degree.

SIGNIFICANCE OF GROMYKO AND MALINOVSKY ACCOMPANYING KHRUSHCHEV

The fact that he was accompanied everywhere, and literally everywhere, by Foreign Minister Gromyko and Marshal Malinovsky is an interesting sidelight on this point. There is much speculation as to this change from his previous attitude during his visits both to the United States and France, when he insisted upon having meetings alone with the President and with President de Gaulle, with only interpreters present. The best guess as to the significance of this new factor is that (1) in view of the brutal and threatening attitude he adopted at Paris it was considered desirable to have some tangible evidence of Soviet armed strength in the person of Marshal Malinovsky. Secondly, Gromyko and Malinovsky would be able to testify upon return to Moscow that he had stuck strictly to the agreed position.

DECISION TO CANCEL INVITATION TO PRESIDENT EISENHOWER; SOVIETS' EXTREME POSITION

It also seems certain that the decision to cancel the invitation to the President was made before Khrushchev left Moscow.

As to what led the Soviets to this extreme position, in regard to the summit meeting which had previously appeared so much desired by Mr. Khrushchev, we enter into the realm of pure speculation, as I indicated earlier. The most we can hope to do in the absence of reliable information is to evaluate the elements and factors which appear to have entered into this decision. I shall try to list them briefly.

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SIGNIFICANCE OF KHRUSHCHEV'S DOUBTS OF SUMMIT SUCCESS ON SOVIET TERMS

1. There was considerable indication, particularly during April that Mr. Khrushchev had concluded that there was little likelihood of his having his way, particularly in regard to Berlin, at the summit. Evidence of Western determination and unity on this point in speeches and statements by Western leaders appears to have brought him to this conclusion. Thus in his Baku speech on April 25, he not only reiterated with the utmost finality his position on Berlin, including his intention to conclude a separate peace treaty with the East German regime, but he also began for the first time seriously to cast doubts upon the success of the summit. By this of course he meant success on Soviet terms.

SOVIET HIERARCHY'S VIEWS OF KHRUSHCHEV'S FOREIGN POLICY AND U–2 INCIDENT

2. Although the evidence is highly inconclusive, there are a number of indications that Mr. Khrushchev's conduct of Soviet foreign policy, particularly his overpersonalization and in Communist eyes overcommitment through personal visits to the United States and France, was arousing at least serious questioning if not opposition to the Soviet hierarchy. It would seem a logical deduction that some of the opposition to his conduct of foreign relations which was openly voiced by the Chinese Communists found a sympathetic response among some of his associates, and very probably among the Soviet military.

3. It was against this background that the U–2 incident occurred.

WEIGHING THE FACTORS RESULTING IN CONFERENCE DISRUPTION

A combination of these three factors in our judgment is what resulted in the definite and brutal decision to disrupt the Paris conference. To determine how each of these factors should be weighed is, for the moment, beyond our reach.

The U–2 incident was most certainly seized upon and magnified beyond its true proportions as a justification for this decision. It is debatable whether it would have been possible for Mr. Khrushchev to devise another pretext for so radical and violent a position.

It might well be that a lack of success at the summit would have confronted Khrushchev with a much more difficult choice, from his point of view, than no conference at all. He and his associates may have therefore much preferred to avoid facing the consequences of failure of negotiation by the simple expedient of torpedoing the conference.

BASIC MISCALCULATION IN SOVIET THINKING

It may seem incredible to you that responsible leaders of a great power should have come all the way to Paris merely for the purpose of wrecking the conference, thereby incurring worldwide condemnation of the Soviet Union and enhancing the sense of unity and purpose among not only the Western Powers represented there but also the North Atlantic Treaty Organization and free nations everywhere.

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I believe the answer lies in a basic miscalculation in Mr. Khrushchev's and the Soviet's thinking.

Mr. Khrushchev undoubtedly hoped—and this explains his early arrival in Paris—to divide the allies and isolate the United States. He anticipated that the United States would refuse the demands he had set forth and that the conference would then collapse, with the United States bearing responsibility for the rupture before world opinion.

His plans miscarried because our two allies stood solidly and loyally with the United States and refused to be parties to Mr. Khrushchev's scheme. The result, as the whole world knows, was that the position which Mr. Khrushchev brought to Paris resulted in the complete isolation of the Soviet Union rather than the United States and in placing the responsibility for the disruption of the conference squarely where it belongs—on his own shoulders.

This estimate of the reasons for Mr. Khrushchev's behavior is strongly supported by the attack which he made at his press conference on General de Gaulle and Prime Minister Macmillan for what he termed their lack of objectivity, lack of will and subservience to the allied relationships—in other words, in plain English, for their solidarity with the United States, their loyalty to our common purpose, and their refusal to play the Soviet game.

SIGNS OF NO RADICAL ALTERATION IN SOVIET POLICY

IV. The future

What conclusions should we draw for the future?

I believe the signs are that there has been as yet no radical alteration in Soviet policy, though we can expect the continuance of a propaganda effort designed to split off the United States from its allies. This conclusion is supported by Mr. Khrushchev's Paris statements, including those at his press conference. It is supported, somewhat more specifically and definitely, by the statements which he made in Berlin on his way home.

We must remember, however, that, given the nature of the Soviet state, the men who run it can meet in secret at any time and change existing policy without public debate or even foreshadowing any such change. It is for this reason that any statement about a phase of Soviet policy must be regarded as qualified, with no certainty that it will remain valid in the future.

Thus, though the world's hopes have been keenly disappointed by the fact that the summit conference was not held as planned, the signs so far are that the basic realities of the world situation have not been greatly changed. Whether this continues to be so depends, as I have indicated, on actions of the leading Communist countries.

IMPLICATIONS FOR U.S. POLICY

Provisionally, however, I conclude that the implication for U.S. policy is that the main lines of our policy remain sound and should be continued. The lesson of Paris is that we should prosecute those lines with renewed effort. Proponents within the Communist bloc of an aggressive course must not be encouraged by signs of weakness on our part. Proponents of a peaceful course should be encouraged by our

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readiness to get on with outstanding international business in a sober and rational manner.

We must remain prepared to withstand aggressive pressures, not only in Berlin but also elsewhere. I trust that our evident readiness will deter such pressures.

FRESH REALIZATION OF THE DANGERS WE FACE

Among the lessons of Paris, the most important for the free world, including ourselves, it seems to me, is fresh realization of the dangers we face and consequent need for closing of ranks and moving ahead with our own and our allies' programs for strengthening the free world. We came back from Paris with a keener sense of what it means to have allies, and I am sure that our alliances will take new life from this experience.

At the same time I would stress equally the need to expand imaginatively and generously our collaboration with the newly developing countries.

On both accounts, I hope the Congress will give wholehearted support to our mutual security programs as authorized by this committee, which are now more important than ever.

SEEKING TO MAKE PROGRESS ON OUTSTANDING PROBLEMS WITH THE SOVIET UNION

We must continue, as the President has said, to seek in a businesslike way to make progress on outstanding problems with the Soviet Union. We intend to go ahead with existing negotiations, to stand by our commitments, and to foster open communication and peaceful exchanges. Above all, we shall not cease from the most determined, patient, resourceful endeavor to find ways to bring the arms race under control and thus to meet the nuclear menace that hangs over mankind.

MAINTAINING A VIGILANT, CALM, AND RESOLUTE POSTURE

I believe in this period it is incumbent upon us, all of us, to keep a calm and steady gaze on the world scene and to avoid actions, statements, and attitudes which might tend unnecessarily to increase international tension. If such an increase is to occur, it should be clearly the fault of the Soviets and we should not do them the favor of providing pretext for action by them which would have this effect.

We should not define as "hard" or "soft" our attitude or policy toward the Soviet Union. To do so is not only to deflect our gaze from the grim reality that confronts us, but even more to plunge us inevitably into fruitless and damaging domestic recrimination. We must now, as in the future, maintain a vigilant, calm, and resolute posture and, insofar as it lies in our power to do so, be accurate in our estimates and effective in our actions.

I would close in expressing the hope that we will not become so fixed in preoccupation with the Soviet challenge as to lose sight of our own constructive purposes—which are larger and more important than merely resisting or reacting to external threats. We have our own vision of the future toward which we want to see the world evolve. We have our own programs for helping to bring that

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future about—for holding high the light of freedom, for sharing its message and rewards with emerging nations, for trying to create an international community in which the rule of law will replace the rule of force. It is to these programs that our talents and energies should be rededicated in the uncertain times that lie ahead.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Secretary.

Mr. Reporter, I have the documentation mentioned by the Secretary on page 4, which will be inserted in the record at this point. They are the various documents and speeches.

(The documentation referred to is as follows:)

STATEMENTS BY KHRUSHCHEV SINCE VISIT TO UNITED STATES

[Compiled by the Department of State]

The following is a collection of public statements made by Khrushchev from the time of his departure from the United States until May 5, 1960, which are offensive or threatening in nature vis-a-vis the West, particularly the United States. The statements are arranged under the following headings: (1) Berlin-Germany; (2) United States and Western policy; (3) the summit; (4) comments on West during Asian tour. They have been extracted from the following statements and speeches:

Speech in Moscow, upon return from United States, September 28, 1959.
Speech in Vladivostok, October 8, 1959.
Speech to Supreme Soviet, October 31, 1959.
Speech to Soviet journalists, November 14, 1959.
Speech at Hungarian Party Congress, December 1, 1959.
Speech to Supreme Soviet, January 14, 1960.
Letter to Chancellor Adenauer, January 28, 1960.
Speech to Indian Parliament, February 11, 1960.
Speech at Delhi civic reception, February 12, 1960.
Speech at Bhilai, February 15, 1960.
Speech at Calcutta dinner, February 15, 1960.
Speech at Jogjakarta, February 21, 1960.
Speech to Indonesian Parliament, February 26, 1960.
Press conference at Jakarta, February 29, 1960.
Press conference at Jakarta, March 1, 1960.
Speech at press luncheon, March 25, 1960.
Speech in Rheims, March 29, 1960.
Press conference at Rambouillet, April 2, 1960.
Speech in Moscow, upon return from France, April 4, 1960.
Speech in Baku, April 25, 1960.

It should be noted that this collection does not include private statements and criticisms of West Germany. On occasion, Khrushchev has been especially offensive and threatening in private talks. The Federal Republic and Chancellor Adenauer personally were the chief targets of offensive public statements on Khrushchev's part during this period. Beginning with his November 14 speech to Soviet journalists, Khrushchev launched a vigorous campaign of slander against the FRG and Adenauer designed to discredit them and isolate the FRG from the West. At times these public statements were truly scurrilous, likening the Chancellor to Nazis, to Hitler, calling him senile, etc.

It is also important to note that in his December 1 speech in Budapest, after a lapse of 3½ months, Khrushchev renewed his threat of a separate peace treaty without any provocation on the part of the West. Apparently Khrushchev then concluded that the West would go ahead with a summit conference and that it was therefore timely to begin exerting pressure on the West on the key issue of Berlin. Moreover, Khrushchev's threat of a separate treaty, in terms of the consequences for the allied position in Berlin, became more explicit and menacing with each succeeding major speech after the December 1 speech, culminating in his April 25 Baku speech threat that the allies would thereby not only be deprived of a legal basis for maintaining access, but would have no right to maintain troops in Berlin.

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BERLIN-GERMANY

"The only way [to settle the Berlin problem] is to sign a peace treaty with Germany, and we have submitted a proposal to that effect. There is no evading a peace treaty for anyone, if the other countries on whom the signing of a peace treaty depends stand for peace and coexistence. The vestiges of World War II must at long last be removed, since they constitute a source that nourishes the instigators of a third world war. We are not forcing a solution of the West Berlin problem in point of time; we are setting no deadlines, issuing no ultimatums; but at the same time we shall not slacken our efforts to come to terms with our allies.

"If we try all means and they do not lead to the desired results, we shall have no other way out except signing a peace treaty with whichever of the two German states wants it. And in such a case we shall bear no responsibility for the refusal to sign the peace treaty. It will be borne by those who had an unreasonable approach to the solution of this problem, who did not take the road of easing tension in relations between states but, on the contrary, wanted to preserve the dangerous source threatening the outbreak of a third world war * * *

"We are doing our utmost to make the Soviet proposals acceptable. We do not impose them, but wish to reach agreement through negotiations, though we have every right to sign a peace treaty with the GDR if the Government of the Federal Republic of Germany does not wish to sign a peace treaty.

"We have before our eyes the example of the United States of America, which has signed a peace treaty with Japan without us. However, it cannot be held that one side can unilaterally sign treaties while the other cannot, though a peace treaty with Japan was signed earlier to its detriment. * * *

"The liquidation of the occupation regime in West Berlin will undoubtedly be conducive to this [improving relations]. We wish to reach agreement with all our former allies. This is why we do not fix any time limits. We want the solution of this question to improve, not worsen, our relations. The Soviet Government is ready to try out any conceivable peaceful means to secure a reasonable solution of the German problem, to promote the improvement of the international atmosphere, and to create conditions for disarmament and the establishment of eternal peace on earth for the sake of mankind's happiness.

"But if we do not meet with understanding, if the forces backing Chancellor Adenauer obstinately insist on the 'positions of strength' policy, we shall have no other choice left but to sign a peace treaty with the GDR. The Soviet Union does not intend to connive with those who are for the continuation of the 'positions of strength' policy. We and our allies would readily sign a treaty with West Germany, but if we do not succeed in this, we shall be compelled to sign a unilateral treaty with the GDR." (Speech at Hungarian Party Congress, December 1, 1959. Khrushchev's first public threat to sign a separate peace treaty with the GDR after his U.S. visit.)

"The Soviet Government considers that a peaceful settlement with Germany is an urgent international question, a question of the very foremost importance. We shall make every effort to have this question solved at last. We sincerely strive to find a solution for the German question together with our allies in the struggle against Hitler Germany. We consider that along with this the question of West Berlin too will be settled on an agreed basis. If, however, all our efforts to conclude a peace treaty with the two German states fail to be crowned with success after all, the Soviet Union, and other willing states, will sign a peace treaty with the GDR with all the consequences proceeding from this." (Khrushchev Supreme Soviet speech, January 14, 1960.)

"But what if we do not meet understanding? Could it be that we should live forever without a peace treaty, and forever resign ourselves to an abnormal situation in West Berlin?

"Of course, we cannot reconcile ourselves to such a situation. If the Soviet Union does not meet understanding it will have no other recourse but to sign a peace treaty with the GDR with all the ensuing consequences, including those for West Berlin. That treaty would settle the frontier questions of Germany with the Polish People's Republic and the Czechoslovak Republic. With the signing of a peace treaty it would be clear to all that to strive to alter the existing frontiers means nothing else but to bring matters to a war. We shall not abet aggressive forces which cherish the dream of pushing German frontiers

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to the east. If some states refuse to sign a peace treaty it will also be clear to all what they stand for: peace or war, for relaxation of tension and friendly relations or for cold war." (Letter to Adenauer, January 28, 1960.)

"AP CORRESPONDENT. Did you actually say that you will insist on a Western withdrawal from West Berlin regardless of the concessions they may make to Russia's position on disarmament? Did you make this statement to President Gronchi of Italy?

"KHRUSHCHEV. The question is put in a not too correct way. The Western powers are allegedly to make concessions to the Soviet Union on questions of safeguarding peace, while we are to make concessions to the West with regard to Berlin. This is incorrect. These are two independent questions, each of which requires a separate solution.

"Is it only the Soviet Union and the socialist countries that are interested in disarmament, in safeguarding peace? All the peoples are interested in safeguarding peace. This is why it is necessary to consider the disarmament question and solve it in a way beneficial for all countries, for all the peoples, for the cause of peace.

"The question of West Berlin is entirely different. This is a question whose solution has been dragged out for 15 years since the end of the war. How much longer can we wait? A summit conference will meet shortly to strengthen peace, but the leftovers of the last war have not been done away with yet. This situation contradicts commonsense. This is why we shall strive to wipe out the hangovers of war, shall try to convince our allies of the last war to sign a peace treaty with the two existing German states. If they fail to understand this need or if they realize it but refuse to agree, then we shall sign a peace treaty with the GDR.

"When a peace treaty with the GDR is signed, all the consequences of the war against Germany will cease to exist on the territory of the GDR and with regard to West Berlin as well. West Berlin is on the territory of the GDR." (Djakarta press conference, February 29, 1960.)

"Question of FRANCE-SOIR correspondent MICHEL GORDET. 'You are regarded as an advocate of peaceful coexistence and territorial status quo between East and West. If this really is so, why do you question the status quo in Berlin where the military positions of the Western powers are weak?

'* * * If all our possibilities are exhausted and our aspirations not understood, we shall unilaterally sign a peace treaty with the GDR. This will settle the problems connected with the liquidation of the remnants of the war in the territory of the GDR which will sign the peace treaty with us; the problem of liquidating the occupation regime in West Berlin will also be settled.'" (Diplomatic Press Association luncheon in Paris, March 25, 1960.)

"We are doing and shall continue to do our utmost to achieve understanding for our policy and to secure the conclusion of a peace treaty with Germany. I repeat, we shall do our utmost to this end. If the Western powers do not understand our peace-loving position, we shall have to conclude a peace treaty with the GDR." (Rheims luncheon, March 29, 1960.)

"Fontaine of LE MONDE. Mr. Chairman, you more than once intimated that the Soviet Union would sign a separate treaty with the GDR if the summit meeting did not lead to the conclusion of a German peace treaty. Could you say more precisely to what extent such a treaty would affect the communications between the Western garrisons in Berlin and West Germany?

"KHRUSHCHEV. If we do not meet with understanding on the part of the leaders of those countries with which the Soviet Union fought against Hitler Germany, we shall have to conclude a peace treaty with the GDR alone. However, this is very undesirable for us; we should not like to do so. But if there is no other way out, we—and not only we but a number of other countries that fought against Nazi Germany—will be impelled to sign a peace treaty with the GDR alone, and all rights arising from the surrender of Nazi Germany would then become invalid on the entire territory under the sovereignty of the GDR. Hence, all countries now having garrisons in West Berlin on the basis of the surrender and defeat of Nazi Germany, would lose all rights connected with the occupation of the city. We have declared this more than once and we also reaffirm this today." (Rambouillet press conference, April 2, 1960.)

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"We shall do everything to solve this question [German peace treaty] on a basis acceptable to the Western powers. But if our efforts are fruitless, then the Soviet Union will conclude a peace treaty with the GDR. And we are sure that all those who understand the necessity of removing the abnormal situation in the center of Europe will sign it along with the Soviet Union.

"We are also convinced that, despite the efforts of Chancellor Adenauer, the Western powers, sooner or later, will arrive at the same conclusion we have. Life itself will compel them to understand that the conclusion of a peace treaty with the two German states is the only correct solution insuring normal conditions of peace and tranquility in Europe." (Lenin Stadium speech on return from France, April 4, 1960.)

"So that nobody should have any illusions, I would like to state sincerely and directly: those who think this, and those who are going to follow such a policy, are going to be disappointed. The Soviet Government, for its part, will do everything to make our position clear, and will spare no effort to convince our partners of the need to conclude a peace treaty and set up a free city in West Berlin. But if, in spite of all our efforts, the Western powers show themselves unwilling to seek together with the Soviet Union an agreed solution of the question of a peace treaty, and, contrary to common sense, ignore this question, then we shall of course go our own way and will conclude a peace treaty with the German Democratic Republic.

"I think that the Soviet Union will not be alone in concluding this peace treaty. Along with us, it will be signed by many other states which are also convinced of the need for a peaceful settlement with Germany.

"The supporters of an aggressive course where the socialist countries are concerned often reason that allegedly even after the signing of a peace treaty with the GDR, the three Western powers would retain the right as before to the maintenance of their troops in West Berlin. I must say that this is an incorrect interpretation, and a policy which is based on such calculations is doomed to failure.

"It is generally known that the signing of a peace treaty will put an end to those conditions which were brought about by the capitulation of the country. Therefore, when a peace treaty is signed with the GDR, on the whole territory which is controlled by the government of this state, the conditions brought about by the surrender will no longer obtain. Thus in relation to this territory, the rights which the Western powers obtained as a result of the surrender of Hitlerite Germany will also lose effect, including the right to the further maintenance of the occupation regime in West Berlin.

"Some politicians say that they, allegedly, do not recognize the GDR, and therefore they do not want to have anything to do with it. It even gets to the point where they call for insuring the stay of the troops of the three powers in West Berlin, and their rights in relation to that city, as based on the surrender and with the aid of force.

"I must warn such hotheads, that when appeal is not made to right and law, when force is invoked, it is natural that force should be opposed by the force of the other side, a force which will rest on law, on right, and will consequently win the moral support of all countries. It cannot be otherwise.

"Our policy is based on concrete conditions. The Soviet Government is guided by the good intentions of liquidating the remnants of World War II, of removing the occupation regime in West Berlin, and of giving West Berlin the status of a free city. Contrary to the assertions of unscrupulous propaganda in the West, nobody intends to encroach upon the freedom, property, and rights of the inhabitants of West Berlin. They will be given every opportunity and every condition for a free choice of the political and social system they desire.

"But West Berlin lies within the territory of the GDR, and obviously when a peace treaty is signed, the GDR will exercise sovereign rights over its entire state territory. If, therefore, the Western powers should not wish to sign a peace treaty with the GDR, that would not preserve for them the rights on whose preservation they insist. They would then obviously lose the right of access to West Berlin by land, water, or air." (Khrushchev speech at meeting in Baku, April 25, 1960.)

U.S. AND WESTERN POLICY

"There are forces in the U.S. which are acting against us, against the easing of tension, and for the continuation of the cold war. To shut one's eyes to this

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would mean showing weakness in the struggle against these evil forces, against these evil spirits.

"* * * I have gained the impression that there are forces in the United States which act not in the same direction as the President. These forces want a continuation of the cold war and the armaments race. Whether these forces are big or small, influential or not influential, whether the forces which support the President can win—and he is supported by the absolute majority of the U.S. people—are questions to which I would not hasten to give a final answer." (Speech in Moscow, upon return from U.S. visit, September 28, 1959.)

"Some militant American generals are trying to frighten us. They are making many speeches with threats against us * * *. I have already said many times that to make militant speeches in our day, when terrible means of destruction have been created, is an extremely dangerous business." (Speech in Vladivostok, October 8, 1959.)

"However, the most bellicose leaders in the West cannot in any way give up the old methods. Echoes of the past are still heard here and there. Take for example the lamentable decision of the U.S. Congress to hold a so-called 'captive nations week' and to offer prayers for their liberation."

"* * * Herter and Assistant Secretary of State Dillon in speeches began something in the nature of psychological attack against the Soviet Union, trying deliberately to distort the character of relations between our country and China * * *. I do not know how it sounds in English, but in Russian attempts of this kind may be called 'bovine logic.'" (Speech to Supreme Soviet, October 31, 1959.)

"Our policy is not a position of strength policy * * *. By the way, I shall reveal—and let people abroad know it, I am making no secret of it—that in one year 250 rockets with hydrogen warheads came off the assembly line in a factory we visited. This represents millions of tons in terms of conventional explosives. You can well imagine that if this lethal weapon is exploded over some country there will be nothing left there at all." (Speech to Soviet journalists, November 14, 1959.)

"During our talks in Washington I told Mr. Eisenhower that his position differed from mine, of course. I was authorized by the Soviet Government, in conformity with the desire of our people, to immediately sign an agreement on disarmament * * *. I believe that the President also wants this, but apparently he cannot do it because there are still strong quarters in the U.S. that oppose disarmament. We must not be deceived in this respect. Yesterday I read Mr. Nelson Rockefeller's statement * * *. But Messrs. Imperialists, if you try to return to the positions of the cold war, Rockefeller will not save you, just as Dulles could not save you." (Speech to Soviet journalists, November 14, 1959.)

"Even now the enemies of socialism are not abandoning their plans for smashing the socialist camp and are, of course, looking for the weak links in it. They want to rout the socialist countries one by one. We must bear this in mind, because it is real, and we must do everything to deprive our enemies of these hopes, to thwart these hopes." (Speech to Hungarian Party Congress, December 1, 1959.)

"Thirst for profit is pushing some imperialistic circles toward continuing the arms race and maintaining the cold war. These circles are sufficiently influential to harm the cause of easing international tension in certain conditions. Those political leaders who have joined their interests with the policy of the arms race are afraid of the easing of international tension and regard it as unthinkable that this easing could become a fact * * *. It is clear that the imperialists will try again to rally the forces of the advocates of cold war." (Speech to Supreme Soviet, January 14, 1960.)

"As to the questions to be discussed at the conference of the heads of governments, I should like to express some reservations. The nearer May 16, the day of the meeting of the heads of government, approaches, the more one-sided becomes the approach of some statesmen of the Western powers to the problems the participants of the conference will have to face. They talk about and fan

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those aspects of this or that problem which, if attention is focused on them, cannot further the search for mutually accepted solutions. It goes without saying that such an attitude does not help the search for ways of solving important international issues. On the contrary, it leads to a maintenance of tension and consequently hinders the normalization of relations between states.

"There is no need to look far to find an example. Let us take a speech, recently made by the U.S. under secretary of state, Dillon, and offered as a summary of U.S. policy before the summit conference. This speech positively smelled of the spirit of the cold war. Dillon's speech reminds us, if anything, of a collection of prefabricated arguments, against the USSR and socialist countries, rather than of a responsible political statement. He kicked up a hullabaloo about the constant communist threat to peace, proposed that the conception of peaceful coexistence be thrown overboard, and crassly distorted the Soviet proposals on disarmament, the conclusion of a German peace treaty, and on West Berlin's transformation into a free city.

"Dillon tried to introduce a stream of unfriendliness and mistrust on the very eve of the summit conference, when it is so important to be consistent, to create and support an atmosphere of trust between states. Dillon described the summit conference as a check on the sincerity of the intentions of the USSR. He tried to make out that the outcome of the conference depends entirely on the USSR and not on all the participants. But nobody will succeed in undermining the trust in the good will of the USSR, the policy of which is clear, is permeated by love of peace and has gained the firm sympathy of the peoples.

"In the eyes of the peoples, the summit conference is truly a serious testing of the policies of the states represented at that conference, perhaps, most of all, of the policy of the United States itself. The peoples will judge sincerity of intention on what each of the four powers brings with it to the conference, and what contribution each power is ready to make to the cause of the lessening of international tension.

"But if one goes by the statement of Mr. Dillon, who understandably is not an outsider to government circles in the United States, it turns out that the U.S. Government is ready to come to an agreement on the disarmament question and on the improvement of relations between the states of East and West only if its own viewpoint is accepted on the Berlin question.

"Why did Dillon have to make a statement which is obviously out of harmony with the atmosphere established between the Soviet Union and the United States after my talks with President Eisenhower at Camp David? Maybe this is simply a manifestation of pugnacity by a diplomat who has got it stuck in his head that if one attacks the other side before talks begin, the other side will become more yielding? One would like to say to Mr. Dillon, and to those who may share his opinion, that such methods are most unsuitable in dealing with the Soviet Union." (Speech in Baku, April 25, 1960.)

THE SUMMIT

"Some in the West claim that the Soviet Union has changed its policy and, therefore, it has become easier to talk with us. This is wrong, of course. We were born Communists, we live as Communists, and will not die, but will continue to march onward as Communists." (Khrushchev speech at Soviet journalists' meeting, November 14, 1959 (referring to a de Gaulle statement made at a November 10 press conference).)

"We have recently reached an agreement * * * on convening a conference of heads of government on May 16 in Paris. It is envisaged that this conference will be followed by a number of summit meetings. It would be improvident to try to guess beforehand the possible results of the forthcoming conference * * * (Khrushchev speech to Supreme Soviet, January 14, 1960.)

"As for the imminent summit meeting * * * naturally we must not think that all controversial issues can be regulated in one or two meetings between the leaders of Western and Eastern powers." (Khrushchev speech at Paris press luncheon, March 25, 1960.)

NOTE.—For Khrushchev's last public statement on the summit before May 1, see his comments of April 25 in Baku quoted under "U.S. and Western Policy."

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COMMENTS ON WEST DURING ASIAN TOUR

"Everyone sees how the plans of the reactionary circles of certain Western powers which pursued a foreign policy 'from positions of strength' are coming to grief. Common sense and the understanding that the policy of 'brinkmanship' is a fatal policy under present conditions are beginning to gain ground.

"It is known that there are circles in the West who are unwilling to reconcile themselves to the beginning of the relaxation of international tension and seek to reverse the march of time and revert the world to cold war times. Especially dangerous in this respect are the activities of the military blocs of NATO, SEATO, and CENTO, the holding of military maneuvers in various parts of the world and the establishment of new bases, including those for nuclear-tipped rockets. In this connection it is impossible to overlook the actions of the Japanese ruling circles, which are a danger to the cause of peace.

"The question of peace is the main question of our time. Closely connected with it is the question of the abolition of the colonial system. The sooner the colonial powers are deprived of their colonies—and the colonialists will then be unable to plunder and oppress other nations—the quicker peace on earth will be established * * *.

"In our time, the colonialists cannot act as they did in the past when the destinies of people throughout the world were decided in European capitals. They are casting about for new ways and means of enslaving countries which recently achieved independence * * *

"Especially dangerous to the people of Asia, Africa and Latin America are various forms of collective colonialism. It is impossible not to mention such manifestations of colonialism as military-political blocs.

"Provocations against Indonesia, Cambodia and Laos are but a few of the shameful deeds of the SEATO bloc operating in your area." (Speech to Indonesian Parliament, February 26, 1960.)

"The struggle for strengthening peace is not an easy job, for still active in some countries are influential forces interested in the continued arms race, and in wrecking the prospect now in evidence of a decrease in international tension and in rekindling the cold war.

"Some of the Western countries are advanced just because those of Asia, Africa and Latin America are underdeveloped. It would be only fair for the Western nations to repay at least a portion of the looted wealth to the peoples whom they held in bondage." (Khrushchev speech to Indian Parliament, February 11, 1960.)

"Whereas all the peace-loving peoples want a further relaxation of international tension, the cold and hot war advocates continue galvanizing such aggressive blocs as NATO, SEATO and CENTO." (Khrushchev speech at Civic Reception in Delhi, February 12, 1960.)

"The Soviet Union and the West have two different approaches to aid. The Soviet Union strives to achieve economic aid which promotes economic independence. But some people in the West utilize assistance as a weapon of new colonial policy." (Khrushchev speech at Bhilai, February 15, 1960.)

"I do not think all of you understand when we show bitterness toward colonialists. For some ages you have been oppressed by colonialists, but still you do not feel as strongly as we do, though we have never in the strictest sense been a colony." (Khrushchev speech at a dinner in Calcutta, February 15, 1960.)

"Peace is also sought by the greater part of the peoples of the capitalist states in Europe and North America, even in the United States of America whose people for long have been influenced by the propaganda of those on the side of the cold war, where expressions of agreement with peace are considered almost akin to traitorous acts towards the interest of the state. * * *" (Khrushchev speech at Jogjakarta (State University of Gadjah Mada) February 21, 1960.)

"The European colonialists implanted their so-called civilization in Asia by the sword and the gun and for centuries they held up the development of the countries they enslaved." (Statement at Press Conference, Djakarta, March 1, 1960.)

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"However, to be frank, one must say that the Western countries, having pumped out incalculable wealth from the colonies as a result of centuries of plunder and are continuing to pump out wealth in one way or another * * * might be fair enough to allocate at least a portion of this wealth for aid to underdeveloped countries." (Khrushchev speech to Indonesian parliament, February 26, 1960.)

"[Afro-Asian countries] are important suppliers of raw materials for the Western powers. The supporters of aggression understand that when the majority of Afro-Asian countries follow a peace-loving policy, they are unable to count on the use of the rich resources of Afro-Asian countries in their aggressive plans." (Khrushchev speech to Jogjakarta University, February 22, 1960.)

"The capitalist states are guided by the law of their society—no cheating, no sales—in other words help the weak today so that tomorrow the weak will again come to you for assistance. * * * This is not assistance, but striving to hook by the ear and drag into slavery, to make one or another country the object of exploitation by a state or group of persons." (Khrushchev press conference, Djakarta, February 29, 1960.)

Additional Khrushchev Statements

The following Khrushchev statements all made after his return from the US, do not fit easily into the four categories listed above. They serve, however, to illustrate his interpretation of "peaceful coexistence," "*detente*," "capitalism," "exchange of ideas," etc.

"There were very good things [in the US], but we must not forget the bad things. This little worm, or, rather, giant worm is still alive, and can display its vitality in the future as well." (Moscow Speech on return from US, September 28, 1959.)

"We must realize clearly that the struggle for the consolidation of peace will be a long one. Peaceful coexistence must be understood correctly. Coexistence means the continuation of the struggle between two social systems, but of a struggle by peaceful means, without war, without the interference of one state into the domestic affairs of another state. One should not be afraid. We must struggle resolutely and consistently for our ideas, for our way of life, for our socialist system. The partisans of capitalism too will not, of course, abandon their way of life, their ideology, they will fight. We hold that this struggle must be economic, political, and ideological, but not military." (Novosibirsk speech, October 10, 1959.)

"He who does not recognize peaceful coexistence wittingly or unwittingly slips down into the positions of the cold war and the armaments race, of deciding international problems by force of arms and not by way of peaceful negotiations. Hence it is clear that it is essential to tear off the masks from all those who wish to embellish the policy of the imperialist state who continue the arms race. Things must be called by their names. The aggressive circles of these countries are striving to decide disputed international questions by means of war. All the pacts and alliances set up by the imperialist states are camouflaged by false statements to the effect that they are allegedly defensive, against the threat of communism. But such statements are not new and have been repeatedly exposed by life itself." (Novosibirsk speech, October 10, 1959.)

"The supporters of capitalism are trying to put a new coat on the decrepit capitalist system, but nothing will come of it; just like a horse, you know, that is getting old and is unable to keep its tail up like a young spirited horse. So, the moribund capitalist system will not see a new surge of energy." (Vladivostok speech, October 8, 1959.)

"In the course of these talks [during the Khrushchev US visit] certain American representatives repeatedly spoke about the so-called free dissemination of ideas. They tried to convince me of the need for wider dissemination in our country of books and films especially selected by them, and of the need for free broadcasting. They want to foist upon us all kinds of trash that would poison

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the minds of Soviet people. Can we agree to this? Of course not. Our people do not want to consume bad food poisoned with the venom of bourgeois ideas." (Kransoyarsk speech, October 9, 1959.)

In his October 31, 1959 speech to the Supreme Soviet, Khrushchev assessed the relative relaxation of international tension and gave his interpretation of the causes for it. These remarks were not directly linked to his US trip, but it was clear that this was his intention.

"Only recently, the foreign policy of some Western powers was built on openly aggressive calculations, on the 'positions of strength' policy. The inspirers of this policy wanted to impose their will on the peace-loving peoples"—i.e., the communist bloc countries. "Sometimes this approach to international affairs was styled a 'policy of pushing back' or 'rolling back,' but the essence remained the same * * *" The advocates of this policy "meant direct military intervention in the affairs of the socialist and other peaceable states. From this stemmed the policy of a continuous arms race, illusory hopes of building up 'nuclear supremacy,' etc * * * Now times have changed. Even some of the active exponents of the 'position of strength' policy see its futility * * * At the present time a more sober evaluation of the situation, a more reasonable understanding of the balance of forces on the international scene is gaining ascendancy in the West." This "inevitably leads to the conclusion that plans involving the use of armed forces against the socialist world should be relegated to oblivion. Life itself demands that the states with different social systems should know how to * * * coexist peacefully * * * the main reason [for these recent changes] lies in the growing might and international influence of the Soviet Union, of all countries of the world system of socialism."

Khrushchev's remarks made clear that Moscow regarded the *detente* (and prospective high-level East-West talks) as a consequence, and not a repudiation of its position of strength policy. Furthermore, by claiming that the improved international atmosphere was due mainly to the West's accommodation to growing Soviet power, Khrushchev implied that there would be further improvement only if the West made further concessions.

WHEN WAS DECISION MADE TO SUSPEND OVERFLIGHTS?

The CHAIRMAN. Proceeding, Mr. Secretary, under our agreed regulations, can you tell the committee when the decision to suspend any further flights over Russian territory was taken?

Secretary HERTER. My impression is that it was taken on the Thursday before the President went to Paris.

The CHAIRMAN. That would be Thursday, is that it, the 12th?

Secretary HERTER. Yes.

The CHAIRMAN. What were the considerations which led to the decision taken on Thursday, the 12th of May, that there should be no further flights over the——

Secretary HERTER. Mr. Chairman, I think I answered that in my own statement, in which I said that since the U–2 system had been compromised, it was discontinued as any other intelligence mission would be in such a case.

The CHAIRMAN. It had been compromised sometime before the 12th, hadn't it?

Secretary HERTER. No, sir.

(Subsequently the Department of State informed the Committee that the reporter had misunderstood the Secretary's answer to this question, which had been "Yes, sir.")

QUESTION OF A MORATORIUM ON FLIGHTS

The CHAIRMAN. Was a moratorium on flights agreed upon prior to May 1 to be effective at any time after May 1?

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Secretary HERTER. Not that I know of.

The CHAIRMAN. You would know of it if it had been taken, wouldn't you?

Secretary HERTER. I am sorry? I couldn't hear the question, Mr. Chairman.

The CHAIRMAN. Was any moratorium on the flights agreed upon prior to May 1, to be effective at any time after May 1?

Secretary HERTER. I have heard reports to that effect, but of my own knowledge I do not know.

The CHAIRMAN. Was such a moratorium ever discussed or considered by anyone in the State Department?

Secretary HERTER. Not by Mr. Dillon nor myself.

The CHAIRMAN. Or anyone?

Secretary HERTER. I don't know of anyone.

The CHAIRMAN. Do you know whether the CIA considered such a moratorium?

Secretary HERTER. I do not, sir.

The CHAIRMAN. Did Mr. Dulles or anyone else order a suspension of flights after the loss of the plane on May 1?

Secretary HERTER. That, sir, he will be able to testify to. I can't tell you as of what date he did that.

PREVIOUS U–2 FLIGHTS

The CHAIRMAN. Were any other planes lost on these same ventures prior to May 1?

Secretary HERTER. [Deleted.] Not over Soviet territory.

The CHAIRMAN. None had been shot down or lost over Soviet territory?

Secretary HERTER. No.

The CHAIRMAN. The flight referred to, that Chairman Khrushchev referred to on April 9, you were aware of that, were you?

Secretary HERTER. Yes.

The CHAIRMAN. It was a successful overflight?

Secretary HERTER. It was.

DELAY IN ANNOUNCING SUSPENSION OF OVERFLIGHTS

The CHAIRMAN. If the President decided to suspend the flights prior to Monday, May 16, which you stated he did on the 12th, why was this announcement delayed until the meeting with Chairman Khrushchev on the 16th?

Secretary HERTER. Because the President reserved that decision to make the announcement in Paris.

The CHAIRMAN. What was the reasoning for doing that?

Secretary HERTER. I cannot give you the answer, sir.

EFFECT OF U–2 INCIDENT ON SOVIET WRECKING OF CONFERENCE

The CHAIRMAN. I believe you stated very convincingly that Chairman Khrushchev came to the conference determined to wreck it. Do you believe that the U–2 incident contributed to this determination on the part of Chairman Khrushchev?

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Secretary HERTER. Might I say because I have got a little cold and can't hear too well, can that question be repeated?

The CHAIRMAN. You have said that Chairman Khrushchev came to the conference determined to wreck it. Do you believe the U-2 incident contributed to this determination?

Secretary HERTER. Yes; I believe it did. It was one of the factors as I tried to explain in my statement.

The CHAIRMAN. Do you think——

DELAY IN ANNOUNCING SUSPENSION OF OVERFLIGHTS

Secretary HERTER. Mr. Chairman, might I for a moment go back to the previous question you had asked as to the President's delay in announcing the suspension of the flights?

You may recall that he at the summit or at the so-called meeting in Paris coupled that with the offer of bringing into the United Nations a proposal for general overflight program superintended by the United Nations and wanted to couple those two things together.

WHY DIDN'T PRESIDENT DISCLAIM RESPONSIBILITY FOR U-2 FLIGHT?

The CHAIRMAN. Mr. Secretary, why do you think Chairman Khrushchev left a way out for the President by suggesting in one of his earlier statements that he believed the President did not know about these flights?

Secretary HERTER. I can there, of course, only speculate that he had committed himself very strongly in Russia with regard to his friendship for the President, and wished to in that way continue the possibility of the President disclaiming any responsibility for the flight.

The CHAIRMAN. What was the reason for not accepting this way out on our part? Why didn't we accept that suggestion?

Secretary HERTER. Mr. Chairman, that was a question, as you know, of judgment.

The CHAIRMAN. That was what?

Secretary HERTER. It was a question of judgment. As to when the essential facts had been revealed by the capture of the pilot and the plane with all its instrumentation intact, the U.S. Government should admit the fact that this overflight had taken place, that it was an intelligence overflight, and that decision was made, of course, by the President himself.

QUESTION OF WISDOM OF THE HEAD OF A STATE ASSUMING RESPONSIBILITY FOR ESPIONAGE

The CHAIRMAN. Mr. Secretary, you are a longtime devotee of international relations and thoroughly familiar with precedents in this field. Is the public assumption of responsibility for espionage by the head of a state the usual and customary practice among nations?

Secretary HERTER. No; the general practice has been, I think, for a long period of time to deny any responsibility whatever.

The CHAIRMAN. Do you know of any precedent in our history or in the history of any great nation in which the head of state has assumed personal responsibility for espionage activities?

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Secretary HERTER. No; I do not know of any firsthand. It may be that there have been some. On the other hand, I would point out, Mr. Chairman, that this particular incident was of a very unusual nature.

The CHAIRMAN. As a general policy, do you believe it is wise for the head of state to assume responsibility for espionage activities?

Secretary HERTER. Well, very frankly, I don't think it makes a great deal of difference from the public point of view.

On the other hand I believe in a case of this kind the telling of the truth was the better course than getting deeper into fabricating excuses or disavowing responsibility.

CIRCUMSTANCES LEADING TO PRESIDENT'S ASSUMPTION OF RESPONSIBILITY FOR ESPIONAGE

The CHAIRMAN. What precisely were the reasons that persuaded you to depart from precedent in this case? What were the unusual circumstances you referred to?

Secretary HERTER. The unusual circumstances were the facts that the materiel and the statement of the pilot, not every bit of which was accurate, but a great part of which was accurate, had been revealed, and could have been presented to impartial tribunals for examination.

Under those circumstances, which was very different from the ordinary espionage case I think it would have become extremely evident and was extremely evident that this incident had taken place.

The CHAIRMAN. Well, in our spy cases, isn't it a fact that the evidence of the particular person being a spy, of some of those we had, was not in question. The difference is in whether or not the head of state takes responsibility for it, not that it was convincingly evident he was a spy. Isn't that the difference?

Secretary HERTER. That is a difference.

The CHAIRMAN. We often catch a spy. We have ourselves, it has been related, and there is no doubt he is a spy with all the paraphernalia which usually accompanies a spy, but the point I thought that would be very interesting to the committee to know is why in this particular case, in spite of the convincing nature of the evidence that he was a spy, that the President and the head of state should assume responsibility for it.

Secretary HERTER. The first was that it was obvious from the facts as to what had occurred. Second was that the situation which had led to this entire activity was the one which is probably disturbing the peace of the world the most, and leads to the greatest tensions in the world; namely the danger of surprise attack, and the secrecy behind the Soviet Union.

SOVIET DELETION IN MAGAZINE OF REFERENCES TO PRESIDENT'S EXPECTED VISIT TO RUSSIA

The CHAIRMAN. Was it not after the President said that he did know and took full responsibility for these flights that Chairman Khrushchev became completely intransigent and wrecked the conference?

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Secretary HERTER. That is very difficult to determine. If I may, I would like to cite at this point just one piece of evidence that I mentioned yesterday before the House Foreign Affairs Committee.

On May 6 the Soviet Embassy in Washington, before any statement had been made accepting any degree of responsibility, before the President had made any statement, this was on May 6, canceled from the magazine which is published in the United States similar to the magazine which is published by the United States in Russia, called the U.S.S.R., stopped a press run of that magazine and took out of it all references to the coming visit of the President to Soviet Russia. The magazine had in it a welcome to the President in his visit to Russia, pictures of the places that he was going to, and a good many photographs indicating what a great success his visit was going to be. That was canceled and taken out of the magazine entirely.

The CHAIRMAN. My time is up. Senator Green. I recognize you for 10 minutes.

EXECUTIVE BRANCH COORDINATION ON U-2 INCIDENT

Senator GREEN. May I ask a few more questions about the same matter because I do not understand, and perhaps it is my fault, how far the President acted alone and how far the State Department acted alone before they came together and agreed on the situation?

Secretary HERTER. Well, I would say that there was consultation right through this period.

Senator GREEN. I didn't understand.

Secretary HERTER. I would say there was consultation right through in this period. May I make this observation, Mr. Chairman? From the point of view of firsthand knowledge on these matters, I asked Mr. Dillon to come up with me because until May 6, I was out of the United States. He was acting Secretary of State and some of the questions that may be directed to that period when I was out of the country he can answer from firsthand information, whereas I would have to do it only from secondhand information.

The CHAIRMAN. We would be very glad to have Mr. Dillon supplement the statement whenever you would like.

Senator GREEN. Mr. Dillon, then will you take up the answer to my question?

Mr. DILLON. All I can say is that in the period that I had responsibility we were in contact regularly with the President with full coordination.

Senator GREEN. Well, the division of authority seems to have resulted in a great many understandings which have been spread well in the press, and the people are anxious to be informed on how it happened; what was the lack in organization or otherwise that was responsible. If you can explain it, I would be glad to have you do so.

ISSUANCE OF COVER STORY ON OVERFLIGHT

Mr. DILLON. If it would be helpful, I will be glad to explain briefly the course of events in the few days after the plane was missing.

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We first received news that this plane was missing, was overdue at its home base on Sunday, which was the day that the Soviet Union later said the plane was shot down.

At that time, it was determined that a cover story would be used as was stated by the President the other night, which had been previously prepared for such instance.

There was full coordination on this. I knew that the cover story was to be issued and it was discussed that it would be issued as usual when a plane was lost at the base from which the plane was lost. There would be no statement from Washington, and this information was given to the people who would be in charge of the flight at the base where it flew from in Turkey. [Deleted.] In due course, the statement was put out there that a plane was missing. The general content of that statement by the base commander at Adana at Turkey was that a U–2 aircraft on the weather mission originating at Adana, Turkey, was missing; that the purpose of the plane's flight had been a study of clear air turbulence; that during the flight in southeast Turkey the pilot reported he had oxygen difficulties; that the last word heard from MDB at 7 o'clock Greenwich time; that the aircraft did not land at Adana, as planned; and that it could only be assumed that it was now down.

A search effort, he said, was underway in the Lake Van area and that the pilot's name was being withheld pending notification of the next of kin.

After that statement was made no further action was taken here because we did not know the circumstances of how the plane had been lost, where it had been lost, whether it had been actually lost over Soviet territory or not, although the presumption was that it had been lost over Soviet territory, because that was apparently where it was going to be the greater part of the time in the flight.

EVENTS LEADING TO STATE DEPARTMENT MAY 5 STATEMENT ON MISSING PLANE

The next incident occurred on the morning of Thursday, the 5th of May when we heard of the first speech by Mr. Khrushchev in which it was stated that they had shot down a plane. They didn't say where the plane had been shot down, but they said that an American plane was shot down. This required action and statements on our part. The news of that was received by me during the course of a meeting, a regular meeting of the National Security Council which was being held that day as you will remember, somewhere out of Washington, as a part of a civil defense exercise.

A series of civil defense exercises were underway at that time which had been long scheduled. When we heard that news, it was decided that the State Department would handle all questions regarding it and taking part in the discussion at that time, present at that time were myself, Secretary Gates, and Mr. Allen Dulles. So we were all three aware of this decision.

Meanwhile, back in Washington, members of the State Department were meeting with members of the Central Intelligence Agency to try and work out a proper statement.

As soon as we returned to Washington, that statement was finalized in agreement with the Central Intelligence Agency and the White

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House was obviously kept informed of the contents of the statement, and the statement was then put out at 12:45 in the State Department. The text of that statement was this:

> The Department has been informed by NASA that as announced May 3 an unarmed plane, a U-2 weather research plane based at Adana, Turkey, piloted by a civilian has been missing since May 1. During the flight of this plane, the pilot reported difficulty with his oxygen equipment. Mr. Khrushchev has announced that a U.S. plane has been shot down over the U.S.S.R. on that date. It may be that this was the missing plane. It is entirely possible that having a failure in the oxygen equipment which could result in the pilot losing consciousness, the plane continued on automatic pilot for a considerable distance and accidentally violated Soviet airspace. The United States is taking this matter up with the Soviet Government, with particular reference to the fate of the pilot.

PREPARATION OF GUIDELINES ON MISSING PLANE

Meanwhile, prior to that, in the days immediately before that, there had also been conversations between the State Department and the Central Intelligence Agency regarding information that might be given to NASA in case there were further questions of them in Washington, for confirmation of statements regarding where the plane was down, something of that nature.

General guidelines on this were prepared. This was prior to the 5th, in the period of the 2d and 4th, and these, I understand, were transmitted to NASA by the Central Intelligence Agency.

The State Department at no time worked directly with NASA on any of this publicity or anything regarding these flights.

Senator GORE. Did you say did, or did not?

Mr. DILLON. Did not. This is part of the cover operation.

[Deleted.]

NASA STATEMENT OF MAY 5

So then the next item on this was that shortly after this statement, NASA was asked a lot of questions about the plane and they, following the cover story that had been prepared earlier, put out the statement which appeared in the press that same day. I think that came out about three-quarters of an hour after our statement. They apparently utilized the general guidelines which they had been given, to answer questions and put them together into a statement which was then put out.

Senator HUMPHREY. What was the date of that?

Mr. DILLON. This was done on May 5. This was right after Mr. Khrushchev's first speech in which he said a plane was down somewhere and this was—you will recall also at that time the Soviets printed a photograph of a plane that was supposedly a wreck and we very rapidly learned, I would say within 24 hours, that this photograph was a fraudulent photograph and was not a photograph of the U–2 wreckage, but was a photograph of some Soviet type plane.

Senator HUMPHREY. Mr. Chairman, may I get a correction?

The CHAIRMAN. The time of the Senator from Rhode Island has expired.

Senator HUMPHREY. Just a technical point. I couldn't follow the sequence. I was wondering about the background documents we have before us and the sequence of relays.

The CHAIRMAN. You will have an opportunity.

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Senator GREEN. I would like to have the witness proceed and finish his statement.

Mr. DILLON. Yes; could I finish this statement?

EVENTS LEADING UP TO STATE DEPARTMENT STATEMENT OF MAY 7

Almost immediately, I would say on Friday the 6th, we were aware that this was a fraudulent picture, and so that gave us some concern that the Soviets might have a greater knowledge regarding the aircraft than we had previously suspected, and that maybe they had in their possession more of the aircraft and possibly had the pilot in their possession. So this was then followed on Saturday morning, the 7th by Khrushchev's speech in which he stated that they did have the pilot, and gave for the first time actual information as to where it was shot down and so forth.

The Secretary returned to Washington on the afternoon of Friday, May 6, from Istanbul and Greece, and I reported to him on the situation as of that time, and at that time he naturally took over. Therefore, on Saturday morning, we met with him to determine what to do next, and at that moment as we met, we were faced with this new Soviet statement saying that they had the pilot, and a new situation had arisen, and his action at that time the Secretary has explained. But that was when the decision was made to reveal the fact that this was an American plane.

Senator GREEN. If I understand you correctly——

The CHAIRMAN. The Senator has run considerably over his time.

Senator GREEN. May I ask one more question?

The CHAIRMAN. We are under a time limitation.

Senator GREEN. I thank you for what you have said. As I understand it, your explanation is that too many cooks spoil the broth.

The CHAIRMAN. The Senator from Wisconsin.

TIMING OF SOVIET DECISION TO WRECK CONFERENCE

Senator WILEY. I want to congratulate you, gentlemen.

It seems to me that the facts as developed this morning, plus the President's address, give us what we have practically all known from the newspapers as descriptive of this situation. I want to ask just a few questions, Mr. Secretary.

In your opinion, do you think that when Khrushchev went to Paris he had already made up his mind to blow up the conference?

Secretary HERTER. I do, sir, and I think that the bulk of the evidence indicates that he was under instructions to do so.

Senator WILEY. In your opinion, is the matter of using what we have used in the past, the U–2's, for a mere period of years, all in the interest of preserving the integrity of the United States and the integrity of the West?

Secretary HERTER. I do indeed.

Senator WILEY. And, in your opinion, if the U–2 incident hadn't happened—this is sort of a duplication of the question but I want to get to the main question—would Khrushchev have had an adequate excuse or would he have drummed up one?

Secretary HERTER. That can only be a matter of speculation. I think that Mr. Khrushchev, as indicated by his Baku speech, felt

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that from his point of view the summit would not turn out satisfactorily, and that the U-2 incident was a convenient handle for him to use to torpedo the conference.

SOVIET KNOWLEDGE OF U-2 OVERFLIGHTS

Senator WILEY. Isn't it a fact that from his remarks that he made in his talk in Berlin he knew that we were using what has been called spy planes, and had been using the same for some time?

Secretary HERTER. It certainly does, and that was repeated yesterday by Mr. Gromyko in the statement that he made at the United Nations in which he said they had known of this for some time, that they had known of it at the time that Mr. Khrushchev was at Camp David. [Deleted.]

PRIOR EXPECTATIONS OF ACCOMPLISHMENTS AT SUMMIT CONFERENCE

Senator WILEY. Then because of previous conferences, as you have outlined in your remarks, it is very clear that there was no real reason to think that a conference could have accomplished anything, because isn't it a fact that both parties were adamant?

Secretary HERTER. That is true, sir, insofar as Berlin and the German situation was concerned. It might have been possible to work out some interim agreement for Berlin. I am rather doubtful whether it would have been. There was some hope that in the field of disarmament, the East and the West could have agreed on directives to those who were negotiating in Geneva to get down to specific disarmament measures to make a start, and to break away from the deadlock that had occurred over pure generalities. That is a hope that we had, that something of that kind might come out of the Paris conference. But, as you may recall, in our public statements we had made it very clear that people should not expect, not have too great hopes of what might come out of it. But as the President has himself said, he had hoped perhaps from this and perhaps from succeeding summit conferences there might be some easing of the overall atmosphere, which in time would lead to a solution of some of these problems.

KHRUSHCHEV STATEMENT ON A FUTURE SUMMIT CONFERENCE

Senator WILEY. What do you think is the reason that if Khrushchev was as heated up as he claims he was, that he said in 6 or 8 months there would be another opportunity for a conference?

Secretary HERTER. I think with the admonition that we have been given earlier in the day with regard to not bringing political matters into this discussion, the inference would have to be drawn by each individual for himself on that.

PRESIDENT'S SPEECH OF MAY 25

Senator WILEY. Mr. Chairman, I don't want to take more time except I do believe that into the minutes of this meeting should go the address of the President of May 25, which is already attached to this summation of these background documents. But in view of the

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fact that we are asking ourselves certain questions about, let us say, where do we go from here, and that is my last question, I ask that this be incorporated in the minutes of this meeting.

The CHAIRMAN. Without objection, it is so ordered.

(The speech referred to appears on p. 249 of appendix 1.)

FUTURE U.S. RELATIONS WITH THE SOVIET UNION

Senator WILEY. Now where do we go from here?

Secretary HERTER. Sir, I tried to indicate that in the last part of my statement. As the President has said, we hope to continue to do business on a businesslike basis with the Soviet Government. We intend to continue with the negotiations that are now underway. We intend to continue with our exchange agreements. One thing I might put in the record at this point. From such information as we have received from our embassies in Moscow, and from our missions in other Soviet bloc countries, the attitude toward our people has remained unchanged. There has been no indication of hostility on a people to people basis that has been evidenced in any way from what happened in Paris.

The CHAIRMAN. The Senator from Minnesota.

SOVIET FEAR OF SPREAD OF NUCLEAR WEAPONS TO WEST GERMANY

Senator HUMPHREY. Mr. Secretary, on page 4 of your statement, you indicate under the subtitle "Summit Prospects Dimmed," a series of developments that you believe indicated a change in the position or a possibility of a change in the position of the Soviet representatives, particularly Mr. Khrushchev, about the summit.

In the third paragraph you say "But clouds began to gather even then," referring to some developments in the Soviet Union.

If you will recall that period, isn't this about the same time that the United States was considering offering nuclear weapons again to West Germany?

Secretary HERTER. I can't recall that we have ever done that.

Senator HUMPHREY. Well, there has been considerable talk about the offering of nuclear weapons to our allies.

Secretary HERTER. We have not been offering them to our allies——

Senator HUMPHREY. I know you have not been offering them.

Secretary HERTER. Under the law we cannot do that.

Senator HUMPHREY. I understand that. There has been considerable discussion here in the United States of changing the law and offering weapons to our NATO allies.

Secretary HERTER. There may have been discussions on that subject, Senator, but we never made any specific proposal on that point.

Senator HUMPHREY. Are you denying there has been any discussion of it, Mr. Secretary?

Secretary HERTER. Oh, no; I said there was some discussion.

Senator HUMPHREY. In official circles.

Secretary HERTER. We have never made any specific proposals of any kind.

Senator HUMPHREY. There was enough talk about it so that resolutions have been introduced into the Congress, and the House of Representatives, as you know, to make sure that this didn't happen.

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My question relates to this: Is there not a great fear in the Soviet Union of the possibility of the spread of nuclear weapons to Western Germany?

Secretary HERTER. I think that is true. I am not sure that it is confined to Western Germany. I think that it applies to the spread of nuclear weapons in other nations and it might well include Communist China.

Senator HUMPHREY. Yes; indeed.

PROPAGANDA NATURE OF KHRUSHCHEV'S STATEMENTS PRECEDING SUMMIT CONFERENCE

Is it not possible that during this period of the dimming of the summit prospects that you referred to that you are saying here was a little counteroffensive on the propaganda level by the Soviet?

Secretary HERTER. Yes; that is possible. On the other hand, may I say this: The summit conference itself was not agreed upon until December after the President, Messrs. Macmillan, de Gaulle, and Adenauer had met in Paris and a note was sent to the Soviet Government suggesting that a summit conference be held and the date was not agreed upon until later than that, the date of May 16.

Senator HUMPHREY. Mr. Secretary, I want it quite clear I happen to believe, as you indicated, that the Soviets made up their minds to scuttle this conference in light of certain developments, such as the visit of Mr. Khrushchev to President de Gaulle; and when he found out that the Americans, the French, and the British were not going to back out on Berlin, and were not going to agree to a separate settlement in Germany, I think that Mr. Khrushchev did come to the conclusion, as you have indicated, that the summit conference could not be a success and therefore, he wanted to get out of it.

But the point that I am raising in light of your statement is, would we not expect Mr. Khrushchev to blast off, so to speak, on such subjects as Berlin and a separate treaty with Germany? Isn't this and hasn't this been a part of his general line for a considerable period of time?

Secretary HERTER. Yes; it is not confined to Mr. Khrushchev. It has been almost a standard technique, before any conference, to take a very adamant position before the conference.

Senator HUMPHREY. Yes.

Well, I only bring this up because while I recognize there was evidence of what you say, possibly a shift of opinion in the Kremlin, there was always a reason for this and there may very well have been the reason that the Soviet leaders constantly want to wage the propaganda war on this nuclear-weapons distribution problem.

STATE DEPARTMENT PRESS AND NEWS BRIEFING OF MAY 5

I want just to correct the record here. I am sorry to have interrupted Senator Green, but Secretary Dillon, when you were discussing for us the sequence of events relating to the U-2 incident, you talked about a press release of the Department of State on May 5; where is it?

Mr. DILLON. I noticed I received this document after I made my statement, and I noticed that it was not included in this document.

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I have here a full text of the on-the-record press and radio news briefing by the State Department spokesman on May 5 at 12:45 p.m. I will be glad to submit this record which includes not only the statement but also on-the-record questions and answers which he made, and that should be inserted before the National Aeronautics and Space Administration news release which was given out before that.

(The excerpt from the press and radio news briefing appears on p. 178 of appendix 1.)

DEFENSE DEPARTMENT'S NEWS RELEASE OF MAY 5

Senator HUMPHREY. Did the Department of Defense give out a release before you did; that is, the State Department?

Mr. DILLON. The Department of Defense's news release was really only confirmation and repetition of the release that had been given out by the airbase commander at Adana, Turkey, and added nothing to that. It merely repeated that that was accurate and that was the one that is in this document.

WHO HAS RESPONSIBILITY FOR U–2 FLIGHTS?

Senator HUMPHREY. Mr. Secretary, what agency or who is the person in, the official in, this Government, who is in charge of these flights, such as the U–2 flights?

Secretary HERTER. The Central Intelligence Agency.

Senator HUMPHREY. Do you have constant information, do you have continuing information, in the State Department, as to the number of these flights, the course of these flights, the purpose of these flights?

Secretary HERTER. The general programs had been gone over with the Department. Obviously it is impossible to tell when these flights are going to take place because they are so dependent on the season of the year and on weather conditions.

The Agency has to plan numbers of alternatives so we never know at any particular time or any particular flight. But the general approval of the program had been received from the State Department, of course, as one of the advisers to the President in this matter.

Senator HUMPHREY. Did you know of this specific flight ahead of time?

Secretary HERTER. I did not; no. I didn't know it was in the air even when I was overseas nor do I think any of us did until it came down.

Senator HUMPHREY. Is that your understanding, Mr. Dillon?

Mr. DILLON. I was not aware that it was in the air until I was informed that it was—it was overdue as I stated previously.

WHO HAS RESPONSIBILITY FOR COVER STORY?

Senator HUMPHREY. When something goes wrong on one of these flights, who is responsible for giving the cover story, the coverup story, so to speak?

Mr. DILLON. Central Intelligence Agency, but we are also responsible for agreeing with them that this is a reasonable story, and it is proper in the circumstances, but they have the responsibility for executing it.

[Deleted].

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POSSIBILITY OF UNIDENTIFIED AIRCRAFT FLYING OVER THE UNITED STATES

Senator HUMPHREY. Mr. Secretary, what do you think would happen in the United States if on our radar screen we should discover a plane flying at high altitude over our territory in this age of the fear of surprise attack?

Secretary HERTER. I think we would do everything we could do to identify it right away.

Senator HUMPHREY. Just identify it?

Secretary HERTER. Yes, identify it. We have the wherewithal, I think to do that.

Senator HUMPHREY. In other words, would we dispatch interceptors?

Secretary HERTER. I think so.

Senator HUMPHREY. What would be our view of such a flight?

Secretary HERTER. Certainly there is very little that such a flight could ascertain that would worry us much. Every bit of information that we have got in this country seems to be available through public means to anyone who wishes to collect documents. In fact in the whole Russian espionage system they have collected maps, documents, and photographs of every part of the United States.

Senator HUMPHREY. I realize this, but in light of the danger of surprise attack this is what I am getting at. This is a little different, may I say, from a spy working in the railroad yard or taking photographs or even a submarine off our coast even though this gets to be a little serious, too. But in the light of danger of surprise attack by air power, there is some difference, is there not?

Secretary HERTER. There is some difference. On the other hand I think we could identify it very quickly. This is the type of plane that no one could possibly mistake for a bomber when you get close enough to look at it. This is entirely an unarmed glider type of plane.

Senator HUMPHREY. Have we ever shot down any Soviet planes over American territory or over any friendly territory in which we have bases or alliances?

Secretary HERTER. Not that I am aware of.

Senator Humphrey. Have we ever intercepted any Soviet planes, in Korea, for example?

Secretary HERTER. I think we have been able to identify them from time to time. Whether we could say that they were deliberate espionage planes or whether they wandered over the line from the border or not I can't tell you.

Senator HUMPHREY. Have we ever shot any down?

The CHAIRMAN. The Senator's time is up.

Senator HUMPHREY. Thank you.

The CHAIRMAN. The Senator from Iowa.

WHAT HAPPENED TO THE U-2 AIRPLANE?

Senator HICKENLOOPER. Mr. Secretary, we hear a great many statements about this plane being shot down. What is the best evidence on that? Was it shot down from its maximum height or did they consider that it had a flameout at that height and then came down to a lower altitude or what?

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Secretary HERTER. Senator, there has been a good deal of speculation on that point. I think that we are very skeptical as to whether it was shot down from a very high altitude. [Deleted.]

Senator HICKENLOOPER. Well, I think there is considerable difference in a situation where this plane might have been shot down at 60,000 or 70,000 feet, or whether it was shot down or shot at at 5,000 or 7,000 feet.

Secretary HERTER. We are very skeptical and there are certain evidences that it was not shot down from that altitude. [Deleted.]

SOVIET KNOWLEDGE OF U–2 OVERFLIGHTS

Senator HICKENLOOPER. Now, I think it has been quite well-established from Mr. Khrushchev's statements, that the Russians were aware for some time in the past that flights of this kind had gone over their territory.

I say I think it is quite evident that Mr. Khrushchev was aware or the Russians were aware that flights of this kind had gone on over their territory. At least they claim they were. Did they ever file a protest with the U.S. Government?

Secretary HERTER. Yes, but not with respect to this type of flight.

WILL THE UNITED STATES BE PERMITTED TO INTERVIEW THE PILOT?

Senator HICKENLOOPER. I understand that we have requested in Moscow that representatives of this Government be permitted to interview the pilot. Have we had any replies from those requests?

Secretary HERTER. As yet they have not given us that permission. They have said that "When we have finished interrogating him we will give consideration to it."

HEALTH AND PLACE OF IMPRISONMENT OF PILOT

Senator HICKENLOOPER. Do we have a reasonable idea as to where he is being held?

Secretary HERTER. That I can't tell you. We have been assured that he is in good health, and beyond that I can't tell you whether we know where he is held or not. Perhaps one of my colleagues knows that. I don't think we have any information on that.

DEFENSIVE VALUE TO UNITED STATES OF U–2 OVERFLIGHTS

Senator HICKENLOOPER. Would you care to give an opinion on the value to this country, in our defensive posture, of these flights, this series of flights which have gone on over Russian territory for the last several years?

Secretary HERTER. Yes, sir, I will give you this opinion. It is a layman's opinion rather than an expert's opinion, but I think they were of very great value to us.

Senator HICKENLOOPER. Isn't it a fact that these flights have enabled us, through the knowledge that we have acquired, to reorient our defensive posture and our equipment and attitudes from time to time because we have been able to find out exactly, in many instances, what the Russians were apparently doing or proposing to do by way of armaments and weapons and installations?

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Secretary HERTER. I think that they have been of very great value to us.

EFFECT OF SOVIET INABILITY TO STOP U–2 FLIGHTS

Senator HICKENLOOPER. Mr. Secretary, have you had any opportunity to get a reliable cross section reading on what other nations of the world think about the vulnerability of Russian defenses; in other words, on the theory that perhaps a part of Mr. Khrushchev's and the Kremlin's infuriation about this matter is an exposition to the world that they knew about these flights and that they could not stop them from going over the Russian territory with any consistency?

Secretary HERTER. I think that undoubtedly that played a considerable part in his own state of mind with regard to the whole incident, the feeling of frustration that they had not been able to stop these during a period of 4 years.

Senator HICKENLOOPER. And that that exposure to the Russian people and to many other nations of the world that had been propagandized perhaps into thinking that the Russians were invulnerable may very well have had some effect on the attitudes within the Kremlin?

Secretary HERTER. It may well have had very real effects.

Senator HICKENLOOPER. I think that is all, Mr. Chairman.

Thank you.

The CHAIRMAN. The Senator from Oregon.

DOES RUSSIA HAVE A LAND-AIR MISSILE?

Senator MORSE. Mr. Secretary, do our experts believe that Russia has a land-air missile?

Secretary HERTER. I think you are having both the Secretary of Defense and the Central Intelligence Agency that can testify to that better than I could.

Senator MORSE. Have they ever informed you as to what their opinion is as to whether or not Russia has a land-air missile?

Secretary HERTER. We, I think, assume that they do.

Senator MORSE. We assume that they do. Is it on the basis of that assumption that they have been asking Congress for some time for a speedup in our land-air missile program, because of the assumption that Russia may have one?

Secretary HERTER. Yes, sir. I am being purposely cautious for security reasons as you understand.

Senator MORSE. I understand.

Secretary HERTER. And possibly in executive session when you have talked to Mr. Dulles you could get further information on that point.

Senator MORSE. And yet, I think from the standpoint of our own security, it is rather important that we have some information as to the possibility, on the line of Senator Hickenlooper's question, the possibility of whether or not this was shot down by a land-air missile.

Senator LAUSCHE. A little louder, if the Senator please.

[Deleted].

SOVIET KNOWLEDGE OF U–2 OVERFLIGHTS

Senator MORSE. [Deleted.]

What evidence do we have, Mr. Secretary, that Russia knew of previous American spy plane flights over Russian territory?

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Secretary HERTER. Only the statements of Mr. Khrushchev and Mr. Gromyko.

Senator MORSE. When?

Secretary HERTER. Mr. Khrushchev made it a number of times. He did so in his statements in Paris. He did so, I think, in his statements that he made to the Central Committee of the Presidium in Moscow before he left.

Mr. Gromyko made that statement again yesterday.

RIGHTS OVER CAPTURE OF SPIES

Senator MORSE. What international law rights do we have, Mr. Secretary, over capture of American spies by foreign governments?

Secretary HERTER. Excuse me, sir?

Senator MORSE. I repeat it. What international law rights do we have over American spies that have been captured by a foreign government?

Secretary HERTER. We have no rights over them that are in contravention of domestic law. We have no international right.

Senator MORSE. Therefore, Russia is under no international law requirement to make this American spy accessible to American Government officials in Moscow.

Secretary HERTER. I do not think so.

COMMUNIST PROPAGANDA ON THE U–2 OVERFLIGHTS

Senator MORSE. Mr. Secretary, do you think the public knowledge now of these American spy plane flights over Russia has played into the hands of Communist propaganda with the Russian people themselves by increasing the fear, no matter how unfounded we know it is, the fear of the Russian people that our real objective is to make war against Russia?

Secretary HERTER. I think that the Russian Government will do its very best to work along that line in its propaganda.

As I said earlier, the evidence we have so far is that the attitude of the Russian people toward our officials, whether in Moscow or in our missions in the Soviet bloc countries, has shown no change.

[Deleted.]

POSSIBLE GENERAL ASSEMBLY CONSIDERATION OF U–2 INCIDENT

Senator MORSE. Mr. Secretary, what plans, if any, does the administration have of carrying on a peace offensive against Khrushchev now in a meeting of the General Assembly of the United Nations?

Secretary HERTER. What the situation may be at the time of the General Assembly meeting is a matter of speculation. The fact that, as I indicated in my prepared statement, he had gone through this extraordinary press conference in Paris using very extreme language, but that he did not make any threats of any specific action; that he then went to East Berlin and called off a mass meeting there, and only invited people to a meeting on the following day and then made a statement with regard to the Berlin situation indicating that there would be no action taken for some time, may well indicate that his position on specific things has not changed. However, only time will

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tell. What his attitude will be and what the whole attitude will be at the time of the meeting of the Assembly, of course, we can only speculate.

It is very possible that he may want at that time to make a more conciliatory gesture. [Deleted.]

RED CHINA'S INFLUENCE ON SOVIET ACTION

Senator MORSE. To what extent, if any, do you think Red China has put pressure on the Russian leaders to follow this adamant course of action?

Secretary HERTER. That again, sir, is a matter of speculation.

Senator MORSE. You have no evidence?

Secretary HERTER. But the articles which have appeared in the Red Star magazine, which is their official publication, have been of such a highly critical nature of the whole policy of so-called peaceful co-existence, the whole detente policy that Mr. Khrushchev seemed to have been following, that they may well have had a considerable influence.

RED CHINA'S MILITARY ACTIVITIES

Senator MORSE. Do you have any reason to believe that we may be confronted with a diversionary movement now in Asia by Red China stepping up military activities in Asia seeking to embarrass us?

Secretary HERTER. I think we should be very alert to that.

Senator MORSE. Do we have any late information as to any progress Red China is making in the development of nuclear weapons, either on their own or assisted by Russia?

Secretary HERTER. No, we do not.

The CHAIRMAN. Senator, your time is up.

The Senator from Vermont.

EFFORTS TO INTERVIEW PILOT

Senator AIKEN. Mr. Secretary, one of the missing links in that chain of information seems to be the circumstances surrounding the capture of the U–2 or parts of it and the pilot.

Has every effort been made on our part to see the pilot of the U–2 to interview him?

Secretary HERTER. Yes.

Senator AIKEN. Has the United Nations taken steps to interview him in view of the Russian resolution or demand now being made in the Security Council?

Secretary HERTER. No, not that I know of.

Senator AIKEN. Have they any right to?

Secretary HERTER. Not that I would know of.

HEALTH OF THE PILOT

Senator AIKEN. Have you any information at all regarding the condition of the pilot?

Secretary HERTER. Only what we have been told; he is in good health.

Senator AIKEN. That was Mr. Khrushchev's statement?

Secretary HERTER. That was——

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SOVIET PHOTOGRAPHIC EVIDENCE

Senator AIKEN. But Mr. Khrushchev very evidently, very obviously, undertook to substantiate his first statement with a false photograph, and then, as I understand it, he later showed another fake photograph to the Russians, claiming that was taken from films developed from the camera in the U–2 plane.

Secretary HERTER. I am not quite so sure that second one was a fake.

Senator AIKEN. You are not so sure—well, I am not referring to the supposed remains of the U–2, but to the photograph of the planes lined up on the ground and claimed to be photographs of Russian planes.

Secretary HERTER. Even so, that could have been a genuine development of film from the plane.

Senator AIKEN. All right.

PREVIOUS RUSSIAN ATTEMPTS TO DOWN A U–2 PLANE

Isn't it a fact that the Russians had previously undertaken to secure a U–2, both by interceptors and rockets?

Secretary HERTER. I can't tell you about that.

Senator AIKEN. Don't you know anything about that, or don't you want to talk?

Secretary HERTER. I can't tell you about rockets. I think there probably have been occasions when they might have tried by interceptor planes, but they couldn't reach that altitude.

UNLIKELIHOOD THAT U–2 WAS BROUGHT DOWN BY A ROCKET

Senator AIKEN. Than you have no comment to make about an undertaking to get one by rockets?

Secretary HERTER. No, I think I can point out one bit of evidence that perhaps will be supplemented when Mr. Dulles testifies here, and that is that the picture of what seemed to be the genuine U–2 plane had bullet holes in the wings and they are not likely to have bullet holes from any rocket.

Senator AIKEN. No.

Does it seem unlikely to you that the U–2 was brought down with a one-shot rocket?

Secretary HERTER. It seems to us very unlikely.

Senator AIKEN. Leaving the pilot and much of the equipment intact as has been claimed?

Secretary HERTER. It seems to us very unlikely.

Senator AIKEN. Wasn't the list of equipment which was given out by Mr. Khrushchev such equipment as would have been naturally carried on any plane that was undertaking to secure information of this type?

Secretary HERTER. That is right.

Senator AIKEN. Of any country?

Secretary HERTER. That is correct.

KHRUSHCHEV'S POSITION ON BERLIN AND EAST GERMANY

Senator AIKEN. Didn't Mr. Khrushchev get himself into a rather untenable position relative to Berlin and East Germany, in fact a

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spot so untenable that he found it virtually necessary to scuttle the summit conference one way or the other?

Secretary HERTER. That, of course, again is a matter of speculation. He had committed himself so strongly on these subjects that certainly under circumstances in most free countries, if the chief executive had committed himself to that extent it would have been very hard for him to retreat from that position. Whether or not he has a free enough hand in Soviet Russia to be able to say one thing and act differently the next day or not, I couldn't tell you.

Senator AIKEN. In view of his previous speeches, wasn't he in a position where he was in trouble regardless of what happened at the summit conference?

Secretary HERTER. He had committed himself very firmly.

Senator AIKEN. Yes.

VIEWS OF FRANCE AND GREAT BRITAIN

Are the United States, France, and Great Britain now in accord with, let's say, the future policy as set forth by the President the night before last?

Secretary HERTER. They have expressed great satisfaction with that.

I beg your pardon. I haven't seen any comment of theirs with regard to his statement the night before last. I am speaking of his statement in Paris.

Senator AIKEN. Yes.

Secretary HERTER. The position that he took in Paris, they expressed complete accord with that.

Senator AIKEN. Have we received any reprimand or any statement in the nature of a reprimand from Britain or France?

Secretary HERTER. None whatever.

U.S. AND U.S.S.R. SPY SYSTEMS

Senator AIKEN (continuing). Since the incidents of recent weeks.

Yesterday, I got a letter from a lady who I thought was somewhat misinformed, probably not indoctrinated, just misinformed, stating that it was the U.S. spy system that forced Russia to maintain a spy system. Do you go along with that theory? It seems to be shared by a good many people, and seems to be a theory which is quite generally distributed though not believed in certain quarters.

Secretary HERTER. I would think, sir, that going back into history that Russia has had a much longer history than the United States and a spy system has been an integral part of Russia's history. [Deleted.]

Senator AIKEN. It is my impression that Russia had an effective system before we did.

Secretary HERTER. Long before.

Senator AIKEN. And that we were very apologetic about our lack of a system up until now.

Well, that is about all.

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EFFECT OF UNILATERAL DISARMAMENT

One other thing that seems to bother some people is this:

Would you agree with anyone who stated that if the United States would disarm unilaterally Russia would promptly follow suit?

Secreary HERTER. If we disarmed unilaterally?

Senator AIKEN. If the United States would disarm unilaterally as an example to the world, Russia would promptly follow suit?

Secretary HERTER. I do not.

Senator AIKEN. That is all.

The CHAIRMAN. Senator Long?

PLANS IN EVENT OF SOVIET DOWNING OF U–2

Senator LONG. Mr. Secretary, I believe that U–2 flights should have been made. I have said that publicly and I have stayed by that statement.

I wondered if the Department and those responsible had not planned well in advance just what we were going to do when the Soviets ultimately got one of these U–2's. Had there been such plans made?

Secretary HERTER. I believe they had. [Deleted.]

Senator LONG. Yes. But that also involves your responsibility because you would be the one who would give the explanation.

Secretary HERTER. That is correct.

ESPIONAGE AND INTERNATIONAL LAW

Senator LONG. While I don't see how the great powers can avoid conducting espionage and military intelligence, as a practical matter as long as it is conducted on the other person's soil, isn't that a violation of international law?

Secretary HERTER. All espionage is a violation of sovereignty, all forms of espionage.

[Deleted.]

However, the Chicago Convention, which is the principal convention dealing with this, has never been accepted by the Russians nor have they accepted any bilateral agreement with regard to airspace over their country.

[Deleted.]

DEVICES CARRIED BY PILOT

Senator LONG. Are these statements about this poison needle and the self-destruction devices correct?

Secretary HERTER. I think so, but there, again, I think that the testimony of Mr. Dulles would be more accurate than anything I could give.

[Deleted.]

EFFECTIVENESS OF U.S. INTELLIGENCE-GATHERING

Senator LONG. Might I ask this question, also: What is your impression of the present condition of our intelligence behind the Iron

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Curtain? Do you believe that we have adequate information, or do you believe it is far from adequate as to what we feel we need to know about a potential opponent?

Secretary HERTER. Well, I think I can answer that in only one way. I think that we are doing the best we can to secure such information as we consider vital. No intelligence service is ever considered perfect. No intelligence service is ever considered completely adequate.

I think we are doing, as I said in connection with this particular operation I felt we were doing, a prudent and efficient job.

ADMISSION OF ESPIONAGE FLIGHT

Senator LONG. Well, I believe I had some information about these U–2 flights prior to this time, not as a member of this committee, but this is information I have run across from time to time as a Senator of the United States. I did not seek to be informed officially and did not want to know directly any more than the hearsay information I had on the subject.

But the thought that occurs to me is this: Would it not be the original plan that this Nation would not under any circumstances admit that it was sending those planes behind the Iron Curtain in the event that one of those planes was captured?

Secretary HERTER. I think that, as Mr. Dillon has explained, a cover story was prepared for that contingency. I think the actual circumstances turned out to be rather different from anything that had been anticipated in the preparatory work that had been done.

Senator LONG. Well, the previous planning had been that we would not admit it; is that correct?

Secretary HERTER. Yes.

Senator LONG. Now, of course, the Russians are in no position to put us on trial. They won't go before the World Court on anything with us, will they?

Secretary HERTER. They have not.

Senator LONG. As a matter of fact, have we not previously tried to get them before the World Court on the shooting down of our planes?

Secretary HERTER. We have tried to get Bulgaria before the World Court and have offered to take one of the cases, the border cases, to court, and they have refused.

Senator LONG. And they have declined?

Secretary HERTER. They have declined.

Senator LONG. In the absence of any admission on the part of this Government, how could they have possibly placed us in a position to force us to admit that that plane was deliberately sent there?

Secretary HERTER. Well, the other cases were all borderline cases of incursions over the edge of the border. This particular case, the plane was shot down in the very center of Russia, some 2,000 kilometers inside of Russia.

Senator LONG. But the point I have in mind, Mr. Secretary, is that I don't see how they can force you to take the fifth amendment because they wouldn't get you before a tribunal to do it because they wouldn't go before it themselves. And I don't see how they could have forced you to concede that that was an authorized mission unless somebody, the President or you, elected to make that admission.

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BRINGING INSTANCES OF ESPIONAGE BEFORE THE UNITED NATIONS

But do you see any way that the Soviets could have compelled you to admit that that espionage mission was a calculated plan and deliberately undertaken?

Secretary HERTER. No, sir, the alternative for us was to continue denying any responsibility whatsoever for it. They would undoubtedly as they said they would do, take it before the United Nations, submit all the evidence to the United Nations, and we would have dug ourselves in deeper and deeper in a denial of something which was perfectly self-evident. That was the choice that we were faced with.

Senator LONG. Well, a denial of espionage; but you also would have considerable indication that they would be denying espionage on their part that you are in position to fairly well prove, could you not? Could you not try your espionage cases before the United Nations as well as they could?

Secretary HERTER. We can. But espionage cases we try before our own courts.

Senator LONG. Yes, but if they wanted to try this case before the United Nations, couldn't you just as well have insisted on trying the cases of their espionage in the United Nations simultaneously?

Secretary HERTER. Yes, we could, but in that particular case the issue was a rather different one.

EFFECT OF PLEADING GUILTY OF ESPIONAGE

Senator LONG. Here is the thought that occurs to me. Under the Russian system if the leader admits he made a mistake he has to resign more or less as Malenkov did or more or less throw himself on the mercy of the party. But when we plead guilty to espionage in this case, how can we plead guilty on the one hand and contend that there is no punishment in order when we plead guilty to violating international law?

Secretary HERTER. We have said we admitted it entirely on the ground that for ourselves and for the free world it was essential for us to get information with regard to dangers of surprise attack or aggression.

Senator LONG. The thought that occurs to me is that; and I am not sure that we are in a position to be completely self-righteous about passing judgment on ourselves in our own case; that is what your own people have said, that we judge our own case and do not let the World Court decide these matters. I, for one, have been holding back because I am not sure we have a fair court. But how do you throw yourselves on the mercy of the Court and deny the Court the right more or less to judge what the penalty should be?

Secretary HERTER. Senator, the cases to which you are referring, of which there have been quite a number, have all been border cases where there was no espionage involved, where it was a question of a border patrol or weather patrol or something of that kind where the issue was as to whether or not there was an intentional overflight or not which is entirely different from this particular case.

Senator LONG. Yes, but the thought that occurs to me is that we didn't have to plead guilty to anything. I know lawyers represent guilty clients. Now, as with the lawyer, when you plead guilty,

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aren't you more or less in a position that you do have either to apologize or take corrective action, or even under our system of law more or less offer to take your punishment if you are going to plead guilty?

Secretary HERTER. As you may recall, the President had stated that he had taken corrective action. He has characterized this as a regrettable incident. When a demand was made on him, these other demands on him, I don't think you, sir, or anyone else could have accepted those demands.

Senator LONG. I don't require my part of your examination be made a part of the public record, Mr. Secretary. I don't insist on it all, but I don't very well see how we can take the attitude that we are going to plead guilty in the matter and then take the attitude that no apology is forthcoming.

Secretary HERTER. I think this, sir, the circumstances which required our admission are the most important thing of all.

Senator GORE. Would you restate that, please, sir?

Secretary HERTER. That the circumstances which required our taking this action of espionage, namely the tremendous importance to the whole free world and to ourselves of having some knowledge as to whether a sudden surprise attack is going to hit us or what form of aggression was likely to be perpetrated, justified the action.

Senator LONG. [Deleted.] My time is up.

The CHAIRMAN. The Senator from Kansas.

INFLUENCE OF KHRUSHCHEV ACTIONS ON FUTURE U.S. INTELLIGENCE-GATHERING ACTIVITIES

Senator CARLSON. Mr. Secretary, I want to ask questions on two items that I have selected from the mail I have received on the summit conference.

The first is that people that write me are concerned because of the fact that Mr. Khrushchev hurled such epithets at us, our President and the Nation, as they have—a coward, a bandit, and aggressor.

Will that influence our course of action in getting information that is necessary for our security?

Secretary HERTER. I think we will do whatever we feel is essential for our security. I am not saying in that respect that we are going to deliberately utilize the U-2 again. I have never said that.

Senator CARLSON. That is one of the questions that concerns our people at the present time.

I was wondering—can we assure the American people that despite all this tirade, there will be no slackening in our efforts to secure, by any measures or means, the information that is necessary for the security of this Nation?

Secretary HERTER. I think both the President—I think the President in particular, has made that very clear.

QUESTION OF MAINTAINING THE STATUS QUO IN BERLIN

Senator CARLSON. I have selected from the mail this question: Can Mr. Khrushchev be counted on to keep his word on maintaining the status quo in Berlin until another summit meeting?

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Secretary HERTER. That is one, sir, that I cannot answer.

Senator CARLSON. That is one of the questions that we are getting.

Now, we are treaty-bound to protect Berlin. Furthermore, we have in recent months assured West Berlin that we will never forsake them. Mr. Khrushchev has said plainly that he would meet force with force in Berlin.

Can the American people be assured that the United States has the full cooperation of our allies in maintaining our position on the Berlin status?

Secretary HERTER. Senator, one of the most impressive things that I have ever seen was the meeting of NATO that took place after the aborted, so-called summit conference. I have never seen such unanimity, such firmness, such determination as exhibited at that meeting.

Senator CARLSON. That statement should be at least encouraging to those of us who are concerned about the situation.

CONTINUED EFFORTS TOWARD DISARMAMENT AND SUSPENSION OF NUCLEAR TESTS

Another thing that I have picked from my mail is this matter that the people are concerned about.

Will the United States continue to press for controlled disarmament and nuclear test suspension?

Secretary HERTER. Yes, sir. I have indicated in my prepared statement that we will continue to do this.

As you know, however, the conditions that we have always adhered to is that the controls have got to be controls that one can rely upon. In other words, reliable controls on both sides.

I think that with the very real danger that exists in the world today of accidental events that may lead to a nuclear war, that we should pursue the course of doing whatever we can to minimize that danger, within the bounds that we have stated; namely, that of reciprocal and effective control.

Senator CARLSON. Mr. Secretary, do you feel that we are making any progress on these nuclear test suspensions at the Geneva Conference and other places?

Secretary HERTER. During the last few weeks, really the last few days, they have been meeting in Geneva examining a coordinated program of research for improving instrumentation so that small shots can be detected underground.

Those conferences have moved, I think, pretty satisfactorily. They are halted at this moment, awaiting some instructions from Moscow.

In the next few days we should know better whether or not there has been any radical change of position on the part of the Russians or not. There is some chance of reaching agreement. It will be a limited agreement at best, but that again depends on full agreement with regard to the control mechanisms.

As you know, those talks have been going for a long time. Until they are shown to be hopeless, I think we will continue with them.

Senator CARLSON. That is all, Mr. Chairman.

The CHAIRMAN. The Senator from Tennessee.

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THREE CRUCIAL QUESTIONS

Senator GORE. Mr. Secretary, it seems to me that three crucial questions here are these:

One. Was there a failure in policy?

Two. Who, if anyone, was in charge?

Three. Was there a lack of coordination and a breakdown in administrative procedure?

Senator WILEY. A little louder, please.

Senator GORE. Would you like me to repeat all of them?

I said that there were three questions, it seemed to me, three crucial questions.

One, was there a failure of policy?

Two, who, if anyone, was in charge?

Three, was there a lack of coordination and breakdown in administrative procedure?

I should like to explore these three questions in inverse order.

RECEIPT OF FIRST INFORMATION THAT U–2 PLANE WAS DOWN IN RUSSIA

When did the Department first receive information that the U–2 flight was down in Russia?

Mr. DILLON. Senator, since I was Acting Secretary at that time, I think it is proper for me to answer that.

That information was received in the Department during the day, on Sunday, the 1st of May, at about the middle of the day, our time.

Senator GORE. What was the nature of that information?

Mr. DILLON. The nature of the information as conveyed to me, which had been received in the Department through the Central Intelligence Agency, was that this plane was overdue at its destination, and that the time beyond which its fuel supply would carry it had run out; and so, therefore, it was presumed down somewhere.

Senator GORE. The question I ask is, When did you first have some notice, some information, some hint that the plane was actually down in Russian territory? I was not referring to your presumption that because of its flight pattern and the amount of fuel that it must be down.

When did you actually receive some intelligence, some hint, that the Soviets had the plane?

Mr. DILLON. That the Soviets had the plane—I think the first information we received on that was at the time Mr. Khrushchev made his statement on Thursday morning before the—I think it was the Supreme Soviet—on the 5th day of May.

Senator GORE. Are you sure you received no hint, no information, no report from either your Embassy in Russia or the Central Intelligence Agency that the plane might actually be down in Russia?

Mr. DILLON. Since most of the flight pattern of the plane, its mission, was to spend most of its time over the Soviet Union, it was our assumption, right from the first word, that when the plane did not return that it was most likely that it was down in the Soviet Union. But we did not receive any specific information that it was down in the Soviet Union, that the Russians had either the plane, the pilot, or any parts of it, until Mr. Khrushchev made the statement on Thursday morning.

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RECEIPT OF FIRST INFORMATION THAT PILOT HAD BEEN CAPTURED

Senator GORE. When did you first receive some hint, some information, some indication that the Soviets might have the pilot alive?

Mr. DILLON. The first information we received on that was received in the Department in the afternoon of the 5th day of May, after we had put out our first statements.

This was in the form of a report from our Embassy in Moscow saying that various other foreign diplomats had heard at cocktail parties or receptions from various Soviet officials that this plane was down and at one time, to one of these foreign diplomats, a Soviet official said that they had the pilot and that report reached us.

We didn't know whether it was accurate or not, but it gave us pause. That reached us the afternoon of Thursday, and I think it was on Friday that we identified the fact that a photograph of the wreckage as put out by the Soviets was a fraud and so then at that time we assumed, we acted on the assumption from then on, that they probably had the pilot and that they possibly had a good deal of the plane.

Senator GORE. A member of your Department informed me in the offices of the committee on Friday morning of the 6th that the Department did, in fact, have information indicating that the Soviets might have this pilot alive.

Mr. DILLON. That was probably reporting the information which I said was received the afternoon of the 5th regarding that.

BASIS FOR STATEMENT OF STATE DEPARTMENT'S NEWS DIRECTOR LINCOLN WHITE

Senator GORE. Yes. Now you say that you knew of the flight, you knew of the flight pattern, and you assumed that the plane was down in Russia.

You say now that on the 5th you received this information that the pilot was probably alive and yet, on the afternoon of the 6th, this Mr. Lincoln White, official spokesman for the Department, said this:

> There was absolutely no—N-O, no deliberate attempt to violate Soviet airspace. There has never been.

Did you authorize that statement?

Mr. DILLON. No, not specifically. Mr. White was not one of those in the Department of State that had any knowledge of these operations.

The statement which we authorized the day before, which is in the record, was not that categoric. But I don't think that there was any reason why he shouldn't have made such a statement. He drew that conclusion from the NASA statement of the day before and when he was asked questions—he didn't volunteer this statement. He was being questioned apparently in a press conference and he made that statement.

We did not authorize a statement, specifically. He did not ask us for it, but he thought he was carrying out the NASA story.

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QUESTION OF COORDINATION REGARDING MR. WHITE'S STATEMENT

Senator GORE. Is Mr. White authorized to speak to the U.S. press on behalf of the Department of State?

Mr. DILLON. Yes, he is.

Senator GORE. Are you now saying that he was making statements about this, but that he was not informed on the subject?

Mr. DILLON. I am stating that he was not informed as to the facts of this intelligence operation any more than the people who made the press statements for NASA were informed of the facts of it.

Senator GORE. Do you call that responsible and coordinated performance?

Mr. DILLON. We are getting at this stage, Senator, into another question, the key question of intelligence. When you have something as important and secret as this, it is important to limit the knowledge to the minimum number of people and this was strictly limited throughout the Government and we did limit it in the State Department.

We did not think it was proper to inform our press people. There was a special procedure for people who were informed of this, and the press people were not so informed.

Senator GORE. Mr. Secretary, I am not questioning you about the initial cover statement issue you had in Turkey. I am asking you about an official falsehood on May 6, after you say the Department knew of the flight pattern, assumed the plane was down, a whole day after you received information that the pilot was probably alive and in the afternoon of the day after even I had been informed. I ask you again if you think this is an example of the coordination which you earlier told us the Department had.

Mr. DILLON. Senator, I will answer that. I think it took a major effort which was reached the following day that we were going to abandon our cover story and tell the truth. That decision could not be reached rapidly and quickly. It was reached after long sessions with the Secretary on Saturday and until that was reached, we saw no reason to inform our press officer of anything but the cover story which is what we were standing by up until that time.

BASIS FOR MR. WHITE'S STATEMENT

The CHAIRMAN. Senator, may I interrupt? I didn't understand why Mr. White wasn't required to clear his statement at this time with you.

Mr. DILLON. I am glad to answer that. Mr. White sees the press every day, and he does not know in advance necessarily the detailed questions that he may be asked.

If a question comes that he thinks he does not know the answer to, he does clear it with us.

Now, the day before, when we put out our statement, it was given to him and he followed exactly what he had been told. He did not make any statement that was quite as categoric as this statement he made the following day.

The CHAIRMAN. Why didn't he stand on the one that had been cleared?

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Mr. DILLON. This was just an answer to a question. Why he did it, he thought he was telling the truth. I think he acted perfectly all right. He did not think that this was a new question. He thought he was following the cover story, which he was. So he made this statement. It wasn't a statement; it was in answer to a question. I want to emphasize that.

The CHAIRMAN. It was a very categorical statement that went far beyond the other statement. That is what begins to complicate your situation, doesn't it?

Mr. DILLON. Possibly to some extent, yes.

The CHAIRMAN. The Senator from Ohio.

IMPORTANCE OF INTELLIGENCE-GATHERING ACTIVITIES

Senator LAUSCHE. First of all, I want to pursue this question. Shall we abandon or modify our efforts of gathering intelligence, covering the military activities of potential aggressors?

First, I ask Mr. Herter this question. At any time during the appearance of Mr. Dulles, the Central Intelligence Agency Director, before this committee, do you know of him at any time being challenged or asked about how he acquired intelligence?

Secretary HERTER. That I cannot answer at firsthand. My impression is that there was a very small group in the Senate with whom he conferred. He has got this responsibility under the law, which was written by the Congress.

Senator LAUSCHE. You have answered my question. Have you ever heard of any member of this committee or any member of the Congress asking the Central Intelligence Agency to discontinue acquiring intelligence or to modify its methods?

Secretary HERTER. No, I do not.

May I qualify that to this extent? I think that Senator Mansfield had introduced a measure which would provide for a different method of coordinating with the Congress. That is the only thing I do know of.

Senator LAUSCHE. Would it be right to assume that at this very moment there is great probability that there are Soviet intelligence agents operating in our country?

Secretary HERTER. I would assume so.

Senator LAUSCHE. Do you know of any member of our Defense Department in a responsible position, or any person in any government who is responsible for security, taking the position that intelligence of a potential enemy's conduct is not essential for the proper development of a nation's own defense?

Secretary HERTER. I do not.

Senator LAUSCHE. Do I understand that you subscribe to the statement made by the President that for the protection of the security of our country it is essential that intelligence of potential enemies' conduct be acquired?

Secretary HERTER. I do.

Senator LAUSCHE. Now then, this question: Do you feel that it would be wise for our Government in the face of the discussions about peace and disarmament and banning of nuclear tests to discontinue our intelligence activities?

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Secretary HERTER. I do not.

Senator LAUSCHE. Would it be a danger to our country if at this moment while we are discussing disarmament and banning of nuclear tests we scuttle the Central Intelligence Agency?

Secretary HERTER. I certainly would not advocate anything of the kind.

Senator LAUSCHE. What is it historically concerning men in a responsible position for the protection of a country, beginning from the earliest days of recorded battles about the use of scouts and intelligence agents, so as to properly guide a country in what it ought to do?

Secretary HERTER. It is a custom, sir, that has grown up, I imagine, ever since warfare began.

KHRUSHCHEV'S DECISION NOT TO PARTICIPATE IN SUMMIT CONFERENCE

Senator LAUSCHE. Now then, the second question: Is it your considered opinion that when Khrushchev came to Paris he had already decided not to participate in the summit conference?

Secretary HERTER. That is our best judgment.

Senator LAUSCHE. And that judgment is formulated not upon what he has said but what he has done; is that correct?

Secretary HERTER. It is a combination of both. But it is mostly in what he has said, and the assumption is that he had received his orders before he went to Paris.

Senator LAUSCHE. Is it a fact that beginning in December 1959 and going down into April, he has made statements indicating that the probability was that there would never be a conference?

Secretary HERTER. Not the probability that there would never be a conference but that if a conference were held it would not turn out to his satisfaction.

KHRUSHCHEV'S MEETINGS WITH DE GAULLE AND MACMILLAN

Senator LAUSCHE. He was scheduled to arrive in Paris on Sunday, May 15; is that correct?

Secretary HERTER. That is correct.

Senator LAUSCHE. But instead of coming there on Sunday, May 15, he came there on Saturday, May 14.

Secretary HERTER. That is right.

Senator LAUSCHE. And on Sunday morning he, with Malinovsky, at the early hour of 11 o'clock already had made an appointment to see de Gaulle.

Secretary HERTER. That is correct.

Senator LAUSCHE. And at that meeting this vigorous statement about what they expected of Eisenhower if Khrushchev were to attend the conference was read.

Secretary HERTER. Yes; that was not only read but a copy of it was given to General de Gaulle.

Senator LAUSCHE. Why do you think that he came there before his scheduled visit of Sunday and made it Saturday?

Secretary HERTER. Why he came to Paris at all is the real question. That is a question that General de Gaulle asked him at the time of the one meeting when the four were present and to which the answer was completely unsatisfactory.

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Senator LAUSCHE. So that at 11 o'clock in the morning he met with de Gaulle and laid down these four demands upon Eisenhower.

Secretary HERTER. That is right.

Senator LAUSCHE. Then at the hour of 4:30 in the afternoon he went to Macmillan and to Macmillan repeated those demands, that unless they were met he would not attend the conference.

Secretary HERTER. That is right.

Senator LAUSCHE. Did anything happen between his arrival on Saturday, his action at 11 o'clock in the morning on Sunday, and 4:30 on Sunday, that would have caused him to change his mind from what he was thinking when he left Moscow?

Secretary HERTER. Not a thing.

PREMIER KHRUSHCHEV'S DEMANDS

Senator LAUSCHE. Now then, Mr. Secretary, getting down to these demands that he made; that is, he demanded that Eisenhower denounce the overflights; is that correct; and two, that he apologize to the Soviet Union.

Secretary HERTER. Yes.

Senator LAUSCHE. And three, that he punish those directly responsible.

Secretary HERTER. Yes.

Senator LAUSCHE. And four, that Eisenhower promise not to repeat these flights.

Secretary HERTER. Yes, may I add there, sir, that the demand for the apology was added; it was not in the original document. It was one that was added by him while he was in Paris as a fourth condition.

Senator LAUSCHE. Can we assume that Khrushchev honestly expected that these demands that he made upon Eisenhower would be complied with?

Secretary HERTER. He could not have possibly.

Senator LAUSCHE. That is additional proof confirming the assumption that when he left Moscow he never intended to participate in the conference.

Secretary HERTER. You are quite right, sir.

WHY DID KHRUSHCHEV GO TO PARIS?

Senator LAUSCHE. Why couldn't he have issued this statement while he was in Moscow, and why did he go to Paris instead of making the statement in Moscow?

Secretary HERTER. There it is a matter of speculation but I think that the desire to dramatize himself, the fact that there would be 3,000 correspondents in Paris, that he would have a larger audience in that place, led him to take this particular route.

SOVIET MISDEEDS

Senator LAUSCHE. Was anything said anywhere about his train of misdeeds, of the Communist Reds', beginning from the very day that they were established as a country, in breaking treaties, in mass murdering of people, including our American boys——

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Secretary HERTER. That was not in the brief meeting of the four. The only statements that were made by the President were the statements which were publicized, plus another statement with regard to the U–2 not being again used for this purpose. That commitment of the President could last, of course, only so long as he was President.

Senator LAUSCHE. You have seen certain questions about which I said I would like to get information. To the extent that it can be done, I would like answers to those questions prepared and put into the record. One, broken treaties. Two, participation—not of Red Russia but Red communism—in the Red Chinese-Soviet provocation of trouble throughout the world, their activities in the Katyn Forest, in Quemoy and Matsu, in South Korea where thousands of our American boys were killed, in Red Hungary, East Germany, and in Poland when the liberty fighters rose to procure liberty for themselves.

Secretary HERTER. Senator, I saw those questions as they are incorporated in the Congressional Record and we will be prepared to answer them.

(The questions and answers referred to above appear in appendix 2.)

Senator LAUSCHE. I want to say I am not prepared to put a halo of honesty and holiness on Khrushchev and one of scorn and disgrace upon my country, not in this hearing or any other place. That is all I have to say.

The CHAIRMAN. Mr. Secretary, the time is a quarter to 1. I think it would be a proper time to adjourn until 2:30.

SELF-PRESERVATION

Senator WILEY. May I ask one question, Mr. Chairman?

The CHAIRMAN. All right, the Senator from Wisconsin is recognized for a question.

Senator WILEY. We say that the first law of human nature is the law of self-preservation. You have heard that said, have you not?

Secretary HERTER. Yes, sir.

Senator WILEY. That applies to nations as well as individuals: does it not?

Secretary HERTER. It does.

Senator WILEY. And in wartime we speak of what we have called spying here; it is called spying, but in peacetime it is espionage: is it not?

Secretary HERTER. Yes, sir.

Senator WILEY. But there are different rules that apply, too, are there not? In wartime then it generally means the penalty is death. In peaceful times like we have now, the penalty depends entirely more or less upon the court administering it: is that right?

Secretary HERTER. Yes.

Senator WILEY. Is it generally conceded that the Kremlin has been engaging in espionage not only in our own country but in virtually all the countries on earth and is still doing it? That is correct, is it not?

Secretary HERTER. That is correct.

Senator WILEY. As demonstrated by Ambassador Lodge in the United Nations the other day, they even tried to pull a stunt on our Embassy in Russia: did you see that?

Secretary HERTER. Yes, sir. [Deleted].

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Senator WILEY. Just this one thing. Now, then, if the first law of human nature is the law of self-preservation, then the best means that we can use to preserve the freedom of America, the CIA has been using when it has been using the overflight, the U-2 means; is that right?

Secretary HERTER. Yes, sir.

Senator WILEY. Thank you.

The CHAIRMAN. Thank you very much, Mr. Secretary. We will return here at 2:30.

Secretary HERTER. 2:30.

The CHAIRMAN. Yes, sir. I may say to the committee that the Secretary has very kindly agreed to go on today and, if the questioning is not completed, to come back in the morning. We will determine that at the end of today's session.

I hope we can make progress.

(Whereupon, at 12:45 p.m. the hearing was recessed, to reconvene at 2:30 p.m. of the same day.)

AFTERNOON SESSION

Present: Senators Fulbright, Humphrey, Mansfield, Gore, Lausche, Wiley, Hickenlooper, Aiken, Carlson and Williams.

The CHAIRMAN. The committee will come to order.

Mr. Secretary, there are one or two statements in your own statement I would like to have developed a bit for clarification.

COURSE FOLLOWED BY PREMIER KHRUSHCHEV

On page 12, at the bottom of the page of the mimeographed statement you say as follows:

> Proponents within the Communist bloc of an aggressive course must not be encouraged by signs of weakness on our part. Proponents of a peaceful course should be encouraged by our readiness to get on with outstanding international business in a sober and rational manner.

In which of these groups do you include Mr. Khrushchev?

STATEMENT OF HON. CHRISTIAN A. HERTER, SECRETARY OF STATE—Resumed

Secretary HERTER. That I think would be very difficult to answer categorically.

There have been a good many estimates made as to whether or not he really means some of the things that he has said with regard to peaceful coexistence, with regard to disarmament and other matters. There is another group that feels that this is a front for the same power line that Stalin used to take.

I don't think it is possible yet to answer that categorically.

I think that events are likely to show which of those groups he belongs to.

The CHAIRMAN. Who did you have in mind when you wrote that? Maybe you can't categorically for all time designate him, but what has been your view and the view of the Department as to which group he belongs in? I think that is rather important as to how we treat him. Is it in our interest to discourage him? If he were a member

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of the aggressive course group, I suppose it would be. If he is a member of the group who are proponents of the peaceful course, then it would be to our advantage to encourage or be cooperative within limits. I wondered why you put that in there if you didn't have some idea of who does belong to these groups or how they are constituted.

Secretary HERTER. What I was trying to describe here was in effect a middle course. Insofar as Mr. Khrushchev is concerned, I think those who have dealt with him directly were convinced that he was genuinely in favor of a disarmament program, that he genuinely wanted, for the sake of developing the economy of Russia, a reduction both in expense from a monetary point of view and from a human point of view, of the great burden of armaments.

Certainly there I would put him in the second category. His more recent behavior, however, has shaken my belief that this is entirely genuine, and, as I say, I think that only the events of the next few months and possibly even of the next few years can give a final answer to what you have asked.

IDENTIFICATION WITH TRENDS IN THE SOVIET UNION

The CHAIRMAN. Can you identify any other members or any people you had in mind in citing these groups?

Secretary HERTER. No. I would rather have those who are real Russian experts do that kind of identification, those who are familiar with the individuals, more familiar than I am.

There is no question but what there are still——

The CHAIRMAN. Would you care to have Mr. Bohlen comment on this question?

Secretary HERTER. I would be very glad to have him, if you wish to.

The CHAIRMAN. It would be very good to have him comment. He is recognized, is he not, as one of our best Russian experts?

Would you care to comment on this, Mr. Bohlen?

Mr. BOHLEN. Mr. Chairman, my experience has been that it is not always possible to identify a trend in the Soviet Union with individuals. As the Secretary said earlier we literally know nothing of what goes on in the hierarchy. My impression of the statement the Secretary made is that it is possible to detect trends. You cannot identify people with them. My experience with the Soviet officials is that they follow whatever the agreed line is, whether it is hard or whether it is soft, with great consistency, and they just do not reveal sufficiently to any foreigner what their inner thoughts are to identify one individual with one trend or another. But I think the indications are that both trends exist.

COURSE FOLLOWED BY PREMIER KHRUSHCHEV

The CHAIRMAN. Well, don't you think we know more about Mr. Khrushchev than any other Soviet leader? More of us have seen him. He has been around more than any other. Don't you have any view as to which of these groups Mr. Khrushchev would be identified with?

Mr. BOHLEN. Well, my acquaintanceship with Mr. Khrushchev was when I was in there as Ambassador when he was not quite as promi-

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nent as he is now. I would merely say that he, along with all of them are excellent actors [deleted] and are able to maintain whatever the common line is in their dealings with foreigners. I think also there is a question of time. I think, as the events of Paris showed, that there have been certain shifts of emphasis inside the Soviet Union which were manifested in part by what they did in Paris.

Therefore, it is conceivable that Mr. Khrushchev could have been entirely serious in the line he was pursuing prior to Paris, and be equally serious in pursuing one diametrically opposite to it.

The CHAIRMAN. If I may interpolate, do you mean that prior to the U–2 incident Mr. Khrushchev may have been identified with the second group; that is, proponents of a peaceful course?

Mr. BOHLEN. I would not segregate out the U–2 incident alone, Mr. Chairman. I think, as outlined in the Secretary's statement, there seemed to us to be three elements involved in this matter, and I think it is difficult to assess the value of each. But, certainly, I would say his doubt as to the success from his point of view of the summit conference, that some of the views voiced by the Chinese Communists had probably supporters within the Soviet hierarchy, and the U–2 incident together brought about this change.

I have no difficulty——

IDENTIFICATION WITH TRENDS IN THE SOVIET UNION

The CHAIRMAN. I didn't wish to make you review all that was said there. I was merely trying to find the inner meaning of this particular statement. I thought that I could elicit some clarification since many of us don't know about these proponents of these courses or about any of these groups of people.

Mr. BOHLEN. The answer, Mr. Chairman, is that I think we don't know. That you cannot tell whether X, Y, or Z in the Soviet hierarchy, what particular line he advocates, because he never reveals any difference, even a shade of difference publicly, with what is the agreed line. It is quite impossible, I believe, for anybody to tell who within the leading group stands for one trend or the other. You can only detect from external evidence that there appear to be certain divergent trends and the individuals may not remain the same.

WAS THERE A DECISION NOT TO SUSPEND FLIGHTS AS SUMMIT MEETING APPROACHED?

The CHAIRMAN. Thank you very much. One other statement, Mr. Secretary, on page 5, point 2:

> The decision not to suspend this program of flights, as the summit meeting approached, was a sound decision.

Can you tell us who made that decision, and when, and of the circumstances?

Secretary HERTER. That is a decision that I think has been carried over the whole 4-year period. Here, sir, we get into certain technical aspects of when these flights would properly be conducted and could not be conducted, but I think the technical reasons had better be kept in executive session.

The finding of a good time for a flight of this kind in relation to current events is almost impossible if you had known in advance that it is going to fail.

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The real issue was how urgent was the information and is there any one time that is more favorable than another? From a technical point of view the time was more favorable at that time than another. From a diplomatic point of view, it seemed to me that with the President scheduled to go to Russia later, there would have been the same difficulty; when Khrushchev was here there was the same difficulty, in effect one would run into one time after another where diplomatically it would have been a bad time.

The CHAIRMAN. I don't think I make myself clear. I understood from your previous statement and others that the program was agreed upon, and it was running along without being suspended. But this statement seems to leave the implication that a specific decision was taken not to suspend them in view of the conference approaching.

Was such a decision taken?

Secretary HERTER. That I can't tell you. I was not a party to that.

The CHAIRMAN. Well, this says:

> The decision not to suspend this program of flights, as the summit meeting approached, was a sound decision.

Was there any decision taken not to suspend it?

Secretary HERTER. I know that when the matter came before me, which was some time previous from the point of view of the continuation of the program, when conditions were appropriate, I did not interpose any objection to it because of any diplomatic event that was coming up.

The CHAIRMAN. Is it fair to say then that no specific decision not to suspend them was taken? It was allowed to go along without any decision being taken to suspend them.

Secretary HERTER. I think that is correct.

The CHAIRMAN. Therefore, the other way around is that no positive decision was taken not to suspend them; is that correct?

Secretary HERTER. That is right.

The CHAIRMAN. That statement, I think, needs clarification. I think, to me, it means that at some point prior to May 1 a specific decision was taken not to suspend them in view of the summit. Isn't that a legitimate interpretation of that sentence?

Secretary HERTER. I think that is correct. May I read what the President said on that subject? He said:

> As to the timing, the question was really whether to halt the program and thus forego the gathering of important information that was essential and that was likely to be unavailable at a later date.

The program went forward.

The CHAIRMAN. Then that decision was made by the President.

Secretary HERTER. Oh, he was certainly consulted with regard to the continuation of the program.

The CHAIRMAN. Do you know when that decision was made?

Secretary HERTER. No.

The CHAIRMAN. Was it prior to May 1?

Secretary HERTER. I couldn't tell you.

QUESTION OF MORATORIUM ON FLIGHTS DURING CAMP DAVID TALKS

The CHAIRMAN. Mr. Secretary, do you know whether there was a moratorium on these flights during the meeting at Camp David?

Secretary HERTER. No. As far as I know, that question never arose.

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The CHAIRMAN. So that there was not, as far as you know?
Secretary HERTER. As far as I know, there was not.

PRESS SECRETARY HAGERTY'S KNOWLEDGE

The CHAIRMAN. I refer to this matter that Mr. Lincoln White did not know that Powers might be alive, the last question before we recessed. Did Mr. Hagerty know whether or not he was at that point?

Secretary HERTER. That I will have to ask Mr. Dillon to answer. I have no direct information.

Mr. DILLON. I have no way of knowing whether Mr. Hagerty knew or not. In the ordinary course of business, a telegram such as the one which informed us of this rumor—it's only a rumor that we had received through other diplomats in Moscow—such a telegram would have been transmitted for information to the White House staff.

Whether Mr. Hagerty knew about it or not, I don't know.

QUESTION OF SOUNDING OUT PREMIER KHRUSHCHEV'S FEELINGS

The CHAIRMAN. Mr. Secretary, was any effort made on the part of our Ambassadors or anyone from the Department, after the incident, to pursue Mr. Khrushchev's feelings?

Was anyone instructed to approach him and express any regret or in any way to reconcile him to forgive or overlook this incident?

Secretary HERTER. No, I don't know of any such thing.

The CHAIRMAN. No approach was made?

Secretary HERTER. No.

IMPLICATION THAT FLIGHTS WOULD CONTINUE

The CHAIRMAN. Mr. Secretary, what were the considerations which led to the decision, not only to assume responsibility for the flight, but to imply that the flights would continue in the future?

Secretary HERTER. I have to take responsibility for the statement that was interpreted and if I may, I would like to read you exactly what was said on that score.

This is a statement that was interpreted that we were going to continue the flights:

> The Government of the United States would be derelict to its responsibility not only to the American people but to free peoples everywhere if it did not, in the absence of Soviet cooperation, take such measures as are possible unilaterally to lessen and to overcome this danger of surprise attack. In fact the United States has not and does not shirk this responsibility.

That is the statement that was interpreted that we were going to continue the flights, and it seems to me it was a pretty far-fetched interpretation.

The CHAIRMAN. Then do you mean in that statement you did not intend to convey the view or the possibility that the flights would be continued; is that correct?

Secretary HERTER. No; what I was saying there was just what I have testified to today; that from the point of view of our own interests and that of the whole free world, it is essential for us to do

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whatever we properly can in order to acquire information to avoid surprise attack or to be prepared for it.

The CHAIRMAN. But in view of that statement, do you think that Mr. Khrushchev could accept it and continue the conference?

Secretary HERTER. Yes; I certainly do, if he had wanted to.

The CHAIRMAN. Do you think our President would accept such a statement from any other power?

Secretary HERTER. If he wanted to go to a conference? Certainly.

The CHAIRMAN. My time is up.

Senator Wiley?

KHRUSHCHEV'S KNOWLEDGE OF FLIGHTS

Senator WILEY. Now in relation to that last question, the President has suggested time and time again an open skies arrangement, hasn't he?

Secretary HERTER. Yes.

Senator WILEY. That means that planes would be flying over our country and over every other country where it is necessary. Again, I go to the subject that I think is most important, because some quoted and I quoted on the floor of the Senate the other day the Biblical verse that a little child shall lead them. I had a group of children from Oshkosh, Wis., that I was talking to. After I talked to them, I opened myself to questions. One of these girls said, "Senator, if we stop taking these flights, how are we going to get the information that is going on back of the Iron Curtain?"

Well, I think all America is asking that question, and I am satisfied that if we are realists, as I think we are becoming more and more, that we are not going to go up a lot of blind alleys about this and that, and about what was or what wasn't said. We are going to face the situation head on and simply say we want defensively to be adequately prepared and alert and we want the Kremlin to know the facts as they have been now for, I think, about 3½ years, that we have been sending these planes over. Khrushchev knew it at the time that he was up at Camp David, and certainly having the knowledge then could have interfered with his interest in holding the meeting if he had wanted it to. Do you think my conclusions are correct in that respect?

Secretary HERTER. I do.

SOVIET REFUSAL TO PERMIT PRESIDENT EISENHOWER'S TRIP

Senator WILEY. I didn't get the import of the questions when I came in that apparently referred to some different groups. What is the name of the young man who defected the other day? I guess that is what you call it. He testified on——

Senator LAUSCHE. Meet the Press.

Senator WILEY. Meet the Press. It is a long, Russian name. I put what he said into the record today. But one of the important things he brought out, and I would like to get the former Ambassador's attention on this, was that there is a group of young people growing up in Russia who have different ideas, and he was about to go into detail on it when time ran out. But among other things, he is the one who said—and this is important—he said some months ago that Khru-

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shchev and the powers in being would not permit the President to come to Russia, that they would find some excuse.

Now, that is all in what he said over the radio here a couple of weeks ago. That confirms, I presume, your own idea that when Khrushchev came to Paris, he had already decided that he was going to throw the bombshell, and he would refuse to invite the President, and so forth; is that right?

Secretary HERTER. That is right.

Senator WILEY. So this is something that didn't result from the downing of the plane.

WHAT HAPPENED TO THE U–2 PLANE?

I want to ask you a question. Have you any definite information as to whether or not this young Powers is alive?

Secretary HERTER. No, sir. We have no information other than that which the Russians have furnished to us.

Senator WILEY. If that plane had been shot down, do you think the instruments that he had with him would have remained intact?

Secretary HERTER. There, sir, I am not skilled enough in the technique of shooting down planes. But I should think it is very doubtful if he was hit by a rocket whether either he or the plane would have come down intact.

Senator WILEY. Is there any thought that perhaps they have the plane? They claim they have the instruments and they have shown something which wasn't the plane. Do you think they have that intact?

Secretary HERTER. They have shown a later photograph of a plane which those who built the plane feel is the plane itself. They have also shown pieces of the plane in Gorky Park in Moscow when they invited all the diplomats to come and look at it, and I think our people feel that that is a genuine part of the plane.

INTERNAL CONDITIONS IN RUSSIA

Senator WILEY. I want to ask the former Ambassador if it is true that the youth in Russia, the new class of youth, is growing up like this fellow said. Someone said if he had been privileged to carry on his answer he would have said they are not satisfied with their standard of living, that they are not satisfied with the little opportunity they have to express themselves in the political life of Russia. Do you know whether that would be true or not?

Mr. BOHLEN. I think it is a fair assumption, Senator. Of course, as you know, the possibilities for contacts in there during the period I was there were considerably less than they are now. The country is still totally controlled by the mechanism of the Communist Party of the Soviet Union. They control all modes of expression by press, meetings, or anything else, so it is very difficult to get any overt signs of the feelings of the youth or any other section of the population.

But there are certain indications that the youth are looking forward at some time in the future to considerably different circumstances. They hope for better material conditions and also undoubtedly hope for a period when they will have more freedom of expression and more ability to participate in the political life of their country.

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But this is very hard to document because people do not talk openly and freely in the Soviet Union.

Senator WILEY. Well, you know that ferment generally is all over this world. You know that the President of Turkey has been kicked out. You saw that today, and you know what is happening elsewhere. Is there any reason why that yeast or ferment should not be operating in Russia among the youngsters?

Mr. BOHLEN. There is no reason why it should not be and it is a logical assumption it is. But I should also say that the controls in a society like the Soviet Union are very tight indeed and I have seen no sign that those controls are breaking down or weakening to the point where the party is not in complete control of the situation. They are able to stifle, if you will, or hold in check this ferment due to the nature of their system.

Senator WILEY. Out of the 200 million Russians, how many of them do you think belong to the Communist Party?

Mr. BOHLEN. I think the latest figure is somewhere in the neighborhood of 8½ million.

Senator WILEY. Thank you. That is all.

The CHAIRMAN. The Senator from Montana?

QUESTION OF INDICATIONS THAT KHRUSHCHEV WOULD SCUTTLE SUMMIT CONFERENCE

Senator MANSFIELD. Mr. Secretary, it has been reported that at the House hearings, you said there were indications that even before May 6 the Russians planned to scuttle the conference.

Now, it seems to me if we are going to estimate the importance of the U–2 incident in the collapse of the summit, we need to fix the date when these indications in any significant fashion began to appear. I would appreciate, then, in the interest of saving time, yes or no answers to certain questions which I am about to ask unless there is a need of an elaboration.

The first question: Are you aware whether any member of the Cabinet or the President had any reason to believe before May 15 when Khrushchev made his demands for an apology and so forth, that he would come to Paris and leave as he did?

Secretary HERTER. No.

Senator MANSFIELD. Were there any indications that Khrushchev planned to scuttle the conference before the U–2 plane was shot down on May 1?

Secretary HERTER. No.

UNDER SECRETARY DILLON'S SPEECH

Senator MANSFIELD. Did Khrushchev's Baku speech precede or follow Mr. Dillon's speech to the AFL–CIO convention?

Secretary HERTER. It followed it.

Senator MANSFIELD. Would you classify Mr. Dillon's speech as very much in the spirit of Camp David or would you say it was an excellent, forthright and anti-Communist statement somewhat oblivious to the spirit of Camp David, the kind of speech which any official of the State Department might have made before that historic meeting?

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Secretary HERTER. That I can't qualify with a yes or no answer, Senator.

Senator MANSFIELD. You can go into detail there.

Secretary HERTER. I would say this, that Mr. Dillon's speech was almost a requirement as an answer to the allegations that had been made by Mr. Khrushchev against Adenauer and the Germans and his continued repetition which I have given the chronology of, of the fact that they were going to take this unilateral position sooner or later without its being an absolute ultimatum on the subject of Berlin, Germany.

Senator MANSFIELD. In other words, Mr. Secretary, speeches which you and Mr. Dillon made were a counteraction to the gradual hardening of Mr. Khrushchev's speeches in the period preceding that?

Secretary HERTER. Entirely.

QUESTION OF STATE DEPARTMENT KNOWLEDGE OF U–2 FLIGHT

Senator MANSFIELD. Did Secretary Dillon propose that a U–2 flight be undertaken prior to the summit conference?

Mr. DILLON. No.

Senator MANSFIELD. Mr. Dillon, as acting Secretary, were you aware beforehand of the scheduling of the U–2 flight over the Soviet Union on May 1?

Mr. DILLON. No, I was not aware of it.

I was aware that there was a program of flights that might take place at some time when the weather was right but I think I was informed of that maybe a month or two before this actual time, and I had nothing to do with it afterward because I didn't in the ordinary course of my duties.

Senator MANSFIELD. Your knowledge was, in effect, general knowledge?

Mr. DILLON. Yes.

Senator MANSFIELD. Mr. Herter happening to be out of the country at the time was, I assume, unaware of any specific flight but perhaps had general knowledge that these flights were being undertaken and had been over a period of years.

Secretary HERTER. I didn't know there was a flight underway. The first knowledge I received was when I was in Ankara. All I heard was this same report that a plane was down.

PRESIDENT'S ASSUMPTION OF RESPONSIBILITY FOR FLIGHT

Senator MANSFIELD. Now, both of you have had general knowledge of this: Would it be a fair assumption to say, despite the fact that the President undertook, in a certain sense, personal responsibility for this particular flight, that he, too, likewise, had only general knowledge but that because of his position as the Chief of State, he would be held responsible under any circumstances because of his position of responsibility?

Secretary HERTER. That is correct.

Might I just qualify one thing? When you say he was familiar with this particular flight and his timing, so far as I know all of us were familiar with alternate possibilities of flights but not this particular flight as such.

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Senator MANSFIELD. That would apply to the Department of State and the President.

Secretary HERTER. That is correct.

STATUTORY AUTHORITY FOR FLIGHTS

Senator MANSFIELD. From what legislation or Executive orders, or both, was the authority for these flights of deep penetration derived?

Secretary HERTER. Well, presumably from the fact that I have here before me—I am told that this applied to two specific acts. The one that I am particularly familiar with, that I had a moment ago, is the one creating the Central Intelligence Agency. The other is the National Security Act.

Senator MANSFIELD. Would it be possible to have copies for the record at this point?

Secretary HERTER. Yes.

Senator MANSFIELD. Mr. Chairman, I ask that they be included in the record at this point.

The CHAIRMAN. Without objection it is so ordered.

(The provisions in the National Security Act relating to the Central Intelligence Agency follow:)

EXCERPT FROM NATIONAL SECURITY ACT OF 1947

(Public Law 253, 80th Cong., July 26, 1947; 61 Stat. 495)

CENTRAL INTELLIGENCE AGENCY[1]

SEC. 102. (a) There is hereby established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence who shall be the head thereof, and with a Deputy Director of Central Intelligence who shall act for, and exercise the powers of, the Director during his absence or disability. The Director and the Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate, from among the commissioned officers of the armed services, whether in an active or retired status, or from among individuals in civilian life: *Provided, however,* That at no time shall the two positions of the Director and Deputy Director be occupied simultaneously by commissioned officers of the armed services, whether in an active or retired status.

(b) (1) If a commissioned officer of the armed services is appointed as Director, or Deputy Director, then—

(A) in the performance of his duties as Director, or Deputy Director, he shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were a civilian in no way connected with the Department of the Army, the Department of the Navy, the Department of the Air Force, or the armed services or any component thereof; and

(B) he shall not possess or exercise any supervision, control, powers, or functions (other than such as he possesses, or is authorized or directed to exercise, as Director, or Deputy Director) with respect to the armed services or any component thereof, the Department of the Army, the Department of the Navy, or the Department of the Air Force, or any branch, bureau, unit, or division thereof, or with respect to any of the personnel (military or civilian) of any of the foregoing.

(2) Except as provided in paragraph (1), the appointment to the office of Director, or Deputy Director, of a commissioned officer of the armed services, and his acceptance of and service in such office, shall in no way affect any status, office, rank, or grade he may occupy or hold in the armed services, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade. Any such commissioned officer shall, while serving

[1] Section 102 (a) and (b) amended by Public Law 15, 83d Congress (67 Stat. 19, 20).

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in the office of Director, or Deputy Director, continue to hold rank and grade not lower than that in which serving at the time of his appointment and to receive the military pay and allowances (active or retired, as the case may be, including personal money allowance) payable to a commissioned officer of his grade and length of service for which the appropriate department shall be reimbursed from any funds available to defray the expenses of the Central Intelligence Agency. He also shall be paid by the Central Intelligence Agency from such funds an annual compensation at a rate equal to the amount by which the compensation established for such position exceeds the amount of his annual military pay and allowances.[2]

(3) The rank or grade of any such commissioned officer shall, during the period in which such commissioned officer occupies the office of Director of Central Intelligence, or Deputy Director of Central Intelligence, be in addition to the numbers and percentages otherwise authorized and appropriated for the armed service of which he is a member.[3]

(c) Notwithstanding the provisions of section 6 of the Act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Director of Central Intelligence may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States, but such termination shall not affect the right of such officer or employee to seek or accept employment of any other department or agency of the Government if declared eligible for such employment by the United States Civil Service Commission.

(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council—

(1) to advise the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security;

(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate, existing agencies and facilities: *Provided*, That the Agency shall have no police, subpena, law-enforcement powers, or internal-security functions: *Provided further*, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: *And provided further*, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure;

(4) to perform, for the benefit of the existing intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.

(e) To the extent recommended by the National Security Council and approved by the President, such intelligence of the departments and agencies of the Government, except as hereinafter provided, relating to the national security shall be open to the inspection of the Director of Central Intelligence, and such intelligence as relates to the national security and is possessed by such departments and other agencies of the Government, except as hereinafter provided, shall be made available to the Director of Central Intelligence for correlation, evaluation, and dissemination: *Provided, however*, That upon the written request of the Director of Central Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security.

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[2] Civilian Compensation—Subsections (a) and (b) supplemented by section 4, Public Law 359, 81st Congress, October 15, 1949 (63 Stat. 880), increased annual compensation to $16,000 and $14,000, for the Director and Deputy Director, respectively, per annum; subsections (c), (d), (e), and (f) from section 102, Public Law 253, 80th Congress, July 26, 1947 (61 Stat. 495). Sections 104(a)(2) and 105(26), Public Law 854, 84th Congress, July 31, 1956, increased the annual compensation to $21,000 and $20,500, respectively, for the Director and Deputy Director.

[3] As amended by Public Law 15, 83d Congress (67 Stat. 20).

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(f) Effective when the Director first appointed under subsection (a) has taken office—

(1) the National Intelligence Authority (11 Fed. Reg. 1337, 1339, February 5, 1946) shall cease to exist; and

(2) The personnel, property, and records of the Central Intelligence Group are transferred to the Central Intelligence Agency, and such group shall cease to exist. Any unexpended balances of appropriations, allocations, or other funds available or authorized to be made available for such Group shall be available and shall be authorized to be made available in like manner for expenditure by the Agency.

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ORAL DIRECTIVE SUSPENDING FLIGHTS

Senator MANSFIELD. Mr. Secretary, by what authority have these flights now been suspended?

Secretary HERTER. Senator, I have now got before me the National Security Act of 1947, and if you wish we to read the pertinent paragraph I will be glad to do so.

Senator MANSFIELD. No; I would just like to have the pertinent parts incorporated in the executive record.

Secretary HERTER. Right.

Senator MANSFIELD. Now the question, to repeat, is by what authority have these flights now been suspended?

Secretary HERTER. By direction of the President.

Senator MANSFIELD. By a Presidential directive. Could we have a copy of that for the record?

Secretary HERTER. Yes; I assume so. I don't know whether it was given in writing or whether it was done by word of mouth.

Senator MANSFIELD. Well, will you look into it and see what you can do to comply with the request?

Secretary HERTER. Yes.

(It was later reported by the Department of State that the directive was oral.)

DURATION OF ORDER SUSPENDING FLIGHTS

Senator MANSFIELD. Will this order suspending the flights automatically remain in force after President Eisenhower leaves office and until it is superseded by another order of some future President?

Secretary HERTER. It could be. The President's responsibility as Commander in Chief which gives him the right to give an order of this kind would, of course, expire with him. It would only be through some treaty obligation that there would be a binding commitment on the part of the United States to carry beyond his term.

Senator MANSFIELD. Do I understand you correctly, then, to state that this order would automatically die with the leaving of office by President Eisenhower, and to become effective again would have to be once again initiated by the next President?

Secretary HERTER. I believe another President would be free to do as he sees fit.

EFFECT OF U–2 INCIDENT ON KHRUSHCHEV'S POSITION IN RUSSIA

Senator MANSFIELD. Have Russian experts in the executive branch suggested the possibility that Khrushchev's position at home may have become seriously undermined?

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Secretary HERTER. Yes.

Senator MANSFIELD. Do you believe that the U–2 may have been a contributing factor to this undermining?

Secretary HERTER. It may have been. May I elaborate on that?

It may have been in the sense that it must have been a great shock to both the military and to the civilian leaders in Russia to find that they had been as open as they were for such a long period of time.

Senator MANSFIELD. And to him as well.

Secretary HERTER. To him as well.

POSSIBILITIES OF CHANGE IN SOVIET LEADERSHIP

Senator MANSFIELD. If Khrushchev should be forced out of power, is it the thinking of the Russian experts in the Department that his successor is likely to be a man more amenable to friendly and peaceful dealings with the West?

Secretary HERTER. That, sir, I cannot answer categorically. I think that that is a pure matter of guesswork.

Senator MANSFIELD. All right.

What, in the view of our Russian experts, is the most probable coalition of influential forces in the Soviet Union and in world communism that could bring about Khrushchev's downfall?

Secretary HERTER. There, sir, I am afraid of my own knowledge I could not answer that. If you would like Mr. Bohlen to answer that, he is as good an authority as we have on the subject.

Senator MANSFIELD. If you will, Mr. Bohlen. But before you do, I would like to throw out indications that perhaps the military, the Chinese Communists and forces of that kind, might be considered.

Mr. BOHLEN. Senator, I honestly in all sincerity think it is not possible to answer that question. I think in dealing with the Soviet Union in view of the general secrecy prevailing in the Communist bloc it is only after the event that you can hope to trace them back and see what particular influences have seemed to have brought about given decisions. There is literally no way in which a foreigner can ascertain what the varying degrees of influence of all factors which go into the making of any particular event. If I might I will give you one illustration of secrecy. I was not there but in June 1957 for 10 days the Presidium of the Central Committee and the Central Committee itself met in a violent inner row which resulted in the expulsion from both of those bodies of Molotov, Kaganovich, Malenkov, and several others.

This went on for 10 days in Moscow and no foreigner in the capital and mighty few Russians knew anything about it.

We had trained observers there. There was an extremely alert U.S. press corps and not one of them got any inkling of this major development. This I merely cite to show the degree of secrecy and if you are trying to get these things you are in truth looking into a crystal ball and a very cloudy one at that.

Senator MANSFIELD. What you have said, Mr. Bohlen, is a reinforcement of thoughts you have previously stated in response to questions propounded to you by the Senator from Wisconsin.

Mr. BOHLEN. That's right, sir.

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Senator MANSFIELD. And, once again, that secrecy is so great there that it is impossible for a westerner to find out what goes on in many instances until after the fact is accomplished.

POSSIBILITY OF SOVIET RETURN TO DEPTHS OF THE COLD WAR

Senator MANSFIELD. Is it the view of the experts in the Department, the Russian experts, that Khrushchev, even if he remains in power, will now take a harder line, a reversion to cold war type tactics in dealing with the Western nations?

Mr. BOHLEN. The indications at present are, and I am speaking at present, that this will not necessarily be so.

I think we can expect a propaganda campaign. The indication from his own statements and from such information as we have received from Moscow, is that there seems to be no determined policy to return to the depths of the cold war at this time.

Senator MANSFIELD. Would you say that if that reversion does take place, taking the opposite tack from what you have just said, and is pushed by the Kremlin or Khrushchev or his successor, that it will make more difficult the maintenance of peace?

Mr. BOHLEN. It would if it returns to a line that we would call the lowest phase of the cold war, it most certainly would, Senator. However, there are degrees in this thing of return to the cold war situation which are impossible to assess and which might not materially increase the danger of war. But if it went all out, sealed off the Soviet Union and the Communist bloc from contact with the outside world, attempted to exert pressures wherever they thought they could do so, I think undoubtedly a much more dangerous world situation would be created.

Senator MANSFIELD. Mr. Chairman, I have other questions but I don't want to take too much time.

The CHAIRMAN. Senator Hickenlooper?

Senator HICKENLOOPER. I don't have any questions at this time.

The CHAIRMAN. Senator Humphrey, did I overlook you?

Senator HUMPHREY. I came in late, Senator. If any other Senator wants to go ahead, it is all right.

The CHAIRMAN. Senator Morse, are you ready?

Senator MORSE. I will yield to Senator Humphrey.

SECRETARY HERTER'S KNOWLEDGE OF FLIGHTS

Senator HUMPHREY. If the question I ask, Mr. Secretary, has already been asked, just brush it aside. I don't want to take any of your time on that.

Did anyone ask as to whether or not you had any personal knowledge of the U–2 flight?

Secretary HERTER. Of the program?

Senator HUMPHREY. No, of the particular flight.

Secretary HERTER. It was included, I said it was included—I am sure it was included in a group of flights that I had been asked whether I had any objections to them.

Senator HUMPHREY. If you wanted to, could you have effectively vetoed such a policy?

Secretary HERTER. No; I could only have given my advice to the President.

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VICE PRESIDENT'S KNOWLEDGE OF FLIGHTS

Senator HUMPHREY. Would the Vice President be aware of these decisions?

Secretary HERTER. I think that as a member of the National Security Council, he was aware of the program in the larger sense. I doubt if he was familiar with any of the individual flights as such, but he may have been.

Senator HUMPHREY. The reason I asked that question was that the Vice President intimated on a television program, I believe the day before the President's announcement in Paris, that the flights should continue. The next day the President announced that he had already canceled them.

The Vice President said they would continue, and the next day the President announced that they had been suspended.

What I am asking is, would the Vice President, as a member of the Security Council, have any opportunity of knowing the decision that had been made by the President?

Secretary HERTER. There, the days followed so quickly one on another that I just couldn't answer that, whether that opportunity would have been offered or not.

Senator HUMPHREY. What I am trying to get at is the policy-making machinery.

We have a subcommittee, as you know, that is studying the policy-making machinery of the Government, the Jackson subcommittee.

I am a member of that subcommittee. We had recently before the subcommittee Mr. Kennan. We have had many of the prominent officials of Government and former officials of Government.

The program of the reconnaisance flights was an established program, and apparently was agreed upon by the Security Council; is that correct?

Secretary HERTER. The Security Council was aware of it, yes.

Senator HUMPHREY. The Vice President is a member of the Security Council?

Secretary HERTER. Yes.

Senator HUMPHREY. If the Vice President states on a television program that he understood that the flights would continue, yet the President announced the next day in Paris that as of the previous Thursday they had already been suspended, do you think there was any lack of communication between the responsibile officials of this Government?

Secretary HERTER. There, sir, I am trying to think of the dates.

The Thursday on which the President gave that order was the day that I went to Paris. I went to Paris that night.

The President followed 2 nights later and whether or not in that 2-day interval anything had been distributed with regard to that order, I just don't know.

IMPACT ON SUMMIT DIPLOMACY OF RECENT EVENTS

Senator HUMPHREY. Do you have any changed views, Mr. Secretary, as to the value of the so-called summitry diplomacy as a result of this recent meeting?

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Secretary HERTER. I think as a method of carrying out negotiations it has taken a hard knock.

Senator HUMPHREY. Have you any idea as to how we are going to proceed in the months ahead? I heard the President's address. It was a good address. He gave a good accounting. He talked about the necessity of maintaining—I believe the word was businesslike relationships—or at least normal relationships insofar as we can with the Soviet Union.

Is there any projected plan as to how we will proceed with our contacts with the Soviet Union?

For example, we have the Geneva Conference still in session on the nuclear testing. I suppose the Disarmament Conference is still a reality.

Is there to be any adjustment in these conferences, any changes? Are they to proceed according to the past?

Secretary HERTER. Yes, the President, I think, made that very clear in his statement.

Senator HUMPHREY. Are there any plans for any type of a high level Foreign Ministers' conference or conference of sub-Cabinet officers?

Secretary HERTER. As of now, there is not. I may add this with regard to the summit; that the four nations that were involved in the summit were the four nations who, as a result of the decisions and agreements reached after the war, were the four nations that have the responsibility for Berlin and for the final settlement of the whole German question, and that is the reason for those four, essentially, getting together.

It is possible that again they will have to get together. Whether normal diplomatic changes would make progress or Foreign Ministers' meetings in advance would make a program so that it would be worthwhile for them to come together, I just can't tell you. That is always a possibility. But almost any other subject, there are many other nations that are involved beside those four, and it is a great question in my mind whether or not that method of coming together for the resolution of problems would be fruitful in the future.

Senator HUMPHREY. In other words, what you are indicating is that a summit conference merely ought to be the ratification, essentially the ratification, of decisions that have been tentatively arrived at, at the normal diplomatic levels.

Secretary HERTER. In my opinion, that is the most desirable thing.

CONTRADICTORY SOVIET ACTIONS

Senator HUMPHREY. I agree. How do you explain, or is there any explanation for what appears to be a contradictory bit of evidence of Gromyko's blustering up at the United Nations on the Soviet resolution and, yet, of the apparent conciliatory behavior of the Soviets in recent days with respect to the quick release of our plane and flyers who strayed into East Germany and the recent broadening of Soviet-American exchange projects?

Secretary HERTER. There again, you have got one of those contradictions. As I was saying earlier, the fact that the attitude of the people in Moscow and even the officials with whom our Embassy officials have to deal, have been entirely normal since this incident.

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It is very hard to reconcile with the very harsh words that both Khrushchev and Gromyko have uttered.

SOVIET OBJECTIVES

Senator HUMPHREY. Do you lay any credence to the doctrine, or at least an observation that has been made, that while the Soviet tactics may change for awhile, that insofar as their general overall strategy is concerned, it will remain pretty much the same as it has?

Secretary HERTER. Certainly as far as their objectives are concerned. I think it was quite clear from some of this documentation that will be put into the record, that is the speeches that were made by Mr. Khrushchev, that he had laid greater and greater emphasis on the eventual triumph of communism over the world, and that he put particular emphasis on that in recent months before the summit.

PREDICTIONS OF SOVIET ACTIONS

Senator HUMPHREY. I have a letter from a gentleman who is a professor emeritus of a university, up at Bennington College, who has had an uncanny record in my years of acquaintanceship with him in understanding what goes on in the Soviet Union. His name is Dr. Bernard Tauer. He is a former Social Democrat of some 35 years ago from Austria, a professor of political economy, now retired. He monitors Soviet broadcasts, studies Soviet literature, particularly photographs and what-have-you. Just to give you a little background, he predicted to me some 3 weeks, I guess it was, before it happened, the removal of Beria. I have a letter here from him right before me, and it is a letter telling how Mr. Khrushchev was going to scuttle the summit conference, written on April 25, this letter is. And I also have a letter from him here in which he says:

> The Soviet leader will now do everything possible to prove that Eisenhower is a warmonger and an imperialist aggressor and not a man of peace, in action not merely in words. We must, therefore, prepare ourselves for all kinds of provocations all around the world.

His thesis is that Khrushchev had been selling the Soviet people upon the idea that President Eisenhower was a man of peace and a man with whom he could deal. I don't mean deal, in the sense of the crudeness of that word, but one with whom he could conduct reasonably good negotiations, and that when the President accepted the responsibility for the flights and didn't accept the opportunity, at least what some people say was an opportunity of removing himself from that responsibility, that Mr. Khrushchev took this as a very personal matter, since he had staked his reputation in the Kremlin and in the councils of the Communist Party upon the fact that he could work with Eisenhower. Then Mr. Khrushchev felt that Eisenhower had not only upset the diplomatic applecart, but, more importantly, from a subjective point of view—Khrushchev's—put Khrushchev in a very difficult position with the Communist Chinese, with the rightwing Stalinists in the Soviet Union, so that Khrushchev is now making a personal crusade out of attacking the President.

What is your view of this? I am going to give you this letter. I have a whole series of these, and this is a very remarkable man, may I say.

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For example, I have a letter from him 2 weeks before the recent shakeup in the Soviet Union which was not too fundamental, but indicating some of the changes that were going to be made, by a very careful analysis of broadcasts and meetings and literature. I had this man down to see the late Senator Walter George, some of you may recall, and he was very helpful at one time. What is your view of Mr. Khrushchev's reactions lately to the President, the personal venom that he seems to exhibit?

Secretary HERTER. I am particularly interested in two things, Senator, in the letter that you have just read; one, the fact that it was written before the U-2 incident.

Senator HUMPHREY. Yes.

Secretary HERTER. In which this authority cites the fact that Mr. Khrushchev was going to scuttle the conference.

Senator HUMPHREY. I think that substantiates essentially what you were saying this morning, your own observations on this.

Secretary HERTER. Yes. The second has to do with the fact that the President didn't accept the way out which Mr. Khrushchev appeared to offer him. My own feeling with regard to that second matter is that it was very much of a trap. That what Mr. Khrushchev thought might happen is that the President would disclaim personal responsibility and that then Mr. Khrushchev would say, "The situation is even more dangerous than I thought, because this means that that same little frantic group in the Pentagon"—and that is the phrase that he used in his press conference—"is running the Government of the United States without the President knowing about it, and that makes our situation even worse" and he would have inveighed in exactly the same terms and asked the President for exactly the same apologies and punishments which he asked for later.

I think that the element of personal pique certainly played a part in the whole show.

The CHAIRMAN. The Senator's time is up.

The Senator from Kansas.

Senator CARLSON. Senator Aiken——

OTHER COUNTRIES' REACTIONS TO SUMMIT CONFERENCE COLLAPSE

The CHAIRMAN. I am sorry, the Senator from Vermont.

Senator AIKEN. I won't take long.

Speaking of the reaction of the rest of the world, have you made any analysis of the reaction of the other countries of the world relative to the collapse of the summit meeting?

Secretary HERTER. Yes, I think we have. It isn't, of course, complete. This will mean a study from a great many nations and bring this altogether in one place.

I think that, perhaps, the best indication has been the attitude among the representatives at the United Nations where you have got a cross section from the rest of the world. From the very outset of the Russian complaint there it was very obvious they weren't going to be able to get any votes from their calling this an aggression, except Soviet bloc votes.

Some of the smaller countries, two of them, abstained in the final vote for reasons that were of a rather different nature.

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But, by and large, we have heard no sympathy from the point of view of what you might call the uncommitted nations or the free nations of the world for the attitude that Mr. Khrushchev took.

Senator AIKEN. Are you satisfied we have not lost prestige throughout the world as a result, or lost more than Russia has?

Secretary HERTER. May I say, sir, that in my opinion our alliances are firmer than they have ever been.

SOVIET HIERARCHY

Senator AIKEN. What was the significance of the shakeup in the Russian Government prior to the U–2 incident, I believe last April, was it not, when Mr. Kozlov was promoted; and coupled with that question, why don't we hear anything about Mr. Mikoyan any more? Has he been isolated or just gotten out of the news, or what has happened with him?

Secretary HERTER. Mr. Bohlen, who is our expert, is also the censor of the document, so I am afraid he has gone out of the room at the moment.

With regard to the disappearance of Mr. Mikoyan, we have been told this is just a normal vacation he has taken down to the Black Sea. It is true in years gone by he had taken rather extended vacations there, and whether this is true or not we can't say.

With respect to the shakeup, I think the only significance that it had were that two of the strongest members of the central committee were sent to other responsibilities and this may have been a personal strengthening of Mr. Khrushchev's power within the committee itself. But it was not considered very highly significant.

Senator AIKEN. That is, Mr. Kozlov's promotion is not significant?

Secretary HERTER. I don't think so. I didn't know that he as such had been promoted.

[Deleted.]

A long time ago, I think when Mr. Averill Harriman was visiting in Russia he reported that Mr. Kozlov had been pointed out to him by Mr. Khrushchev as his successor, saying that he and Mikoyan were too old to carry on and that Kozlov was the No. 2 man. But there was no telling whether he was saying that seriously or whether he was being flattering about it because Mr. Kozlov was there at the time.

Senator AIKEN. I thought he made the best impression of any of our Russian visitors last summer. At least when he came before this committee, I thought he did.

I have no further questions.

The CHAIRMAN. The Senator from Oregon.

FUNCTION OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Senator MORSE. Mr. Secretary, I think it would be helpful for this record if you made a statement in regard to the functions of NASA, and the part that NASA played in connection with the U–2 flight.

I don't think the record is very clear as to what are the functions of NASA, and what jurisdiction, if any, the State Department has over NASA and what the relationship between NASA and the National Security Council is, and the State Department.

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Secretary HERTER. NASA, as you know, is an agency devoted entirely to the peaceful development of satellites and outer space vehicles of one kind or another.

Its operations have now been separated out from what were called purely military operations, although it is always inevitable in the development of boosters that there should be an interrelationship between the two, because the military vehicle and the peaceful vehicle have got the same problems of propulsion to get up into the air. The witnesses of NASA, of course, will be before the committee.

[Deleted.] Most of the U–2's are used by NASA in connection with purely scientific work, meteorological work. Actually, the Japanese Government found them tremendously valuable in tracing the course of tornadoes last year, and I think that NASA put out at least three publications on their findings from the U–2 weather observations.

[Deleted.]

NASA'S ROLE IN THE U–2 INCIDENT

With respect to the actual development of events in relation to NASA, I am sorry to say that I can't give you firsthand information.

Perhaps Mr. Dillon can supplement that as it occurred while I was overseas and when Mr. Dillon was in charge.

Mr. DILLON. All I can say is as far as I know the State Department didn't have any direct relationships with NASA on this matter, and the relationships that there were, were handled by the Central Intelligence Agency [deleted], so either Mr. Dulles or the NASA witnesses themselves will be able to inform you on that.

Senator MORSE. Why would NASA make a statement in regard to this plane if it was under the jurisdiction of CIA?

Mr. DILLON. On the cover story it was in the open, the plane was under the jurisdiction of NASA. Actually for this operation it was under the jurisdiction of CIA. [Deleted.]

Senator MORSE. Therefore, NASA, in your opinion, was acting within the proprieties when it issued the statement that it issued.

Mr. DILLON. I think so; yes.

Senator MORSE. You think it had cleared that statement with CIA or had authority from CIA to issue it.

Secretary HERTER. I think so.

Mr. DILLON. They should have; as I understood the matter, these guidelines to answer questions were prepared by CIA. They were gone over with State Department people a day or two before. We had thought that NASA was going to handle this in the way of answering questions, which we knew they would get, because this was a NASA plane, and they apparently chose instead to forestall the questions just by putting it all out in the form of a statement. [Deleted.]

QUESTION OF EXECUTIVE BRANCH COORDINATION ON U–2 STATEMENTS

Senator MORSE. I raise the question because I want to do what I can in order to clarify the record in regard to the allegation made that there is not the best of coordination between the State Depart-

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ment, CIA, Pentagon Building, and now NASA, and that there may be a need for a centralization in the State Department of the authority to authorize any statement by any of these agencies in regard to a situation such as this, because of some possible reason to believe that if this had been centralized more we would not have been having different statements coming from different agencies.

Mr. DILLON. We were not aware, actually, of the fact that NASA was going to make as formal a statement as this, and it was somewhat of a surprise.

The CHAIRMAN. I could not hear that answer.

Mr. DILLON. I say we were not aware of the fact that NASA was going to make such a formal statement as this, and I am not sure that the Central Intelligence Agency was either.

All the relationships—as I said in my original statement, there was coordination, there was a decision that the statements were going to be made by the State Department.

That decision was taken and made known to the other agencies concerned, which were the Department of Defense, and the Central Intelligence Agency then on the morning of May 5.

The Central Intelligence Agency had the relationships with NASA and undertook to pass that on. We had no relationships with NASA. They didn't know we were in this thing, and somehow this statement was put out by NASA somewhat more complete than we expected but it was along the lines of the material that they had been furnished.

VICE PRESIDENT'S KNOWLEDGE OF FLIGHTS

Senator MORSE. Turning to a question that Senator Humphrey asked—and may I assure you that I am quite nonpolitical in raising that—I am only seeking to find out who had knowledge of what in regard to the matter. I refer to the May 27 issue of the Washington Post, in an article by Mr. Chalmers Roberts in the course of which he said:

> Nowhere in the 3½-hour television program did Nixon refer to any Presidential direction in the U–2 crisis, other than his approval of the flights some years earlier. Nor was there any reference to his own part in the affair. Nixon, of course, sits in the National Security Council. Nixon did say that he was "privy" to the U–2 reconnaissance policy "and I do endorse it." He also said that "I knew about this flight."

Now, my interpretation, Mr. Secretary, of your testimony is that neither you nor the President knew this specific flight was going to be taken at the time that it was taken, but that you did know that there was a general program for such flights and that this flight could be considered as a part of that program.

Now I ask you, do you have any reason to believe that Nixon knew anything that you and the President did not know and that maybe it is just an unfortunate use of language when he says "I knew about this flight," and that he probably means that he knew about the general program of reconnaissance?

Secretary HERTER. I would assume it was about the general program rather than about the particular flight.

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NATIONAL SECURITY COUNCIL'S KNOWLEDGE OF FLIGHTS

Senator MORSE. But as far as you know, the National Security Council did not brief its members in regard to any particular flights without also notifying the President in regard to specific flights.

Secretary HERTER. No, I think the National Security Council was only aware of the general program.

Senator MORSE. Are you a member of the National Security Council?

Secretary HERTER. Yes, I am.

NUCLEAR ARMAMENT RACE

Senator MORSE. One final question at this round, Mr. Secretary: As you know I, along with everyone else, I think, who has the interest of peace at heart, am very much concerned about long continuation of this nuclear armament race.

Do you think that the United States and the Western Powers on the one hand and Russia on the other can continue this nuclear armament race with its constant increase and acceleration for another 10 years and not create the great probability of war?

Secretary HERTER. I don't know about the great probability of war, Senator, but I would say certainly increase the chances of war.

Senator MORSE. I know we are of one mind but I want the record to show this particular one mind: Do you agree with me that our generation simply has the responsibility in history to find some honorable way to end this nuclear armament race?

Secretary HERTER. I agree with you completely on that.

Senator MORSE. Do you think that we ought to do everything that we can to try to get the United Nations to exercise greater jurisdictional authority in connection with this whole matter of armament race than we have been able to get it to do so far?

Secretary HERTER. Senator, some time ago I made a speech in connection with disarmament in which I stated my views as to the great necessity in the following years to finding some answer to this, and at the same time finding an answer within the framework of the United Nations of an authority which could maintain the peace with law, and I still feel that just as strongly as I did at the time I made that speech.

RECORD OF THE WORLD COURT

Senator MORSE. Mr. Chairman, my time is up and I want to make a request for data if I may.

The CHAIRMAN. Certainly.

Senator MORSE. This morning we talked about the cases that we had offered to take to the World Court.

Senator WILEY. A little louder, Senator.

Senator MORSE. This morning you talked about the cases that we were willing to take to the World Court. I wonder if the State Department can compile for the committee the record in regard to the World Court's operation, both on the cases it has handled and the cases that we have offered to have it handle that have been rejected by Russia or any other power.

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Secretary HERTER. Yes; we will be very glad to do that.

(The following information was subsequently furnished for the record:)

STATEMENT BY THE DEPARTMENT OF STATE: INTERNATIONAL COURT OF JUSTICE—CONTENTIOUS CASES PROPOSED BY THE UNITED STATES AGAINST SOVIET-BLOC COUNTRIES

1. The United States has proposed to the Soviet Union the adjudication of four separate cases concerning aerial incidents. In each of these cases, the United States has filed with the Registry of the International Court of Justice an application instituting proceedings. These were the following cases: (*a*) Treatment in Hungary of aircraft and crew of United States of America (*United States* v. *U.S.S.R.*); (*b*) aerial incident of October 7, 1952 (*United States* v. *U.S.S.R.*); (*c*) aerial incident of September 4, 1954 (*United States* v. *U.S.S.R.*); and (*d*) aerial incident of November 7, 1954 (*United States* v. *U.S.S.R.*). Each of these four cases has been dismissed by the Court for lack of jurisdiction. The Court lacked jurisdiction because the Soviet Union has never accepted the compulsory jurisdiction of the Court under article 36(2) of its statute nor agreed to jurisdiction specially in any case.

2. The United States also instituted proceedings before the International Court of Justice in cases against Hungary and Czechoslovakia. These were: (*e*) Treatment in Hungary of aircraft and crew of United States of America (*United States* v. *Hungarian People's Republic*); and (*f*) aerial incident of March 10, 1953 (*United States* v. *Czechoslovakia*). Each of these cases was also dismissed by the Court for lack of jurisdiction. Again, the reason was that neither Hungary nor Czechoslovakia has ever accepted the jurisdiction of the Court in any way.

3. The United States also instituted proceedings before the International Court of Justice in a case against Bulgaria, the aerial incident of July 27, 1955 (*United States* v. *Bulgaria*). This case differed from those above in that Bulgaria had accepted the compulsory jurisdiction of the former Permanent Court of International Justice in 1921, and it was the contention of the United States that Bulgaria was subject to the compulsory jurisdiction of the present International Court of Justice by virtue of article 36(5) of this Court's statute. Bulgaria challenged the jurisdiction of the Court on several grounds, including a decision of the Court in another case arising out of the same aerial incident that Bulgaria is not subject to the jurisdiction of the Court, and a reciprocal invocation of the United States domestic jurisdiction reservation. The United States has moved to discontinue the case.

The CHAIRMAN. The Senator from Kansas.

DEVALUATION OF SOVIET CURRENCY

Senator CARLSON. Mr. Secretary, recently one of our Nation's financial writers, writing on the conditions in Russia, wrote that Mr. Khrushchev was proposing a devaluation of the currency as of January 1, and he stated that no nation tampers with its currency unless it is in financial difficulty.

What do we know about the financial and economic condition of Russia that would lead us to believe or know that he is planning on devaluating the currency?

Secretary HERTER. This I hadn't heard at all. I hadn't seen that particular statement and I have seen nowhere in any report any indications that they were planning to devalue their currency.

There is no question but that their foreign exchange rate, their official rate, doesn't correspond with reality. They have two rates, one an official rate and one a tourist rate. They are very far apart. One is 4 rubles to the dollar and one is 10 rubles to the dollar. But from the point of view of their internal financial situation, I have heard no reports they were planning to devalue the ruble.

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INTERNAL CONDITIONS IN SOVIET UNION

Senator CARLSON. We have had evidence that there is social unrest among the people, that they are thinking that they are entitled to better living conditions, better homes and housing.

Do we have any evidence of that?

Secretary HERTER. Yes; I think there is. But this is a matter that Mr. Bohlen testified to a few moments ago.

Senator CARLSON. That there is?

Secretary HERTER. There is evidence of that. As Mr. Bohlen said, it is impossible to get documentary evidence, as such, because of the secrecy and the discipline in their society, but I think that every visitor to Russia who has had a chance to talk with the workmen or the students at the university and so on, has come back with that feeling.

After all, Mr. Khrushchev has made a good many statements about the necessity of increasing the standard of living of their people.

In their incentives that they offer from the point of view of their workers, better living conditions in these housing projects is one of the principal incentives that they have been offering in the past, giving people priority if their particular sections of a plant do particularly well from the point of view of production, they will be advanced to better living quarters.

I think that the urge for better living quarters and a better standard of living, more consumer goods, is a very real one.

SOVIET REDUCTION IN ARMED FORCES AND LABOR SHORTAGE

Senator CARLSON. Does the State Department have any evidence of a labor shortage in Russia based on a statement that was recently made that Mr. Khrushchev reduced his military strength because it was necessary to get some of the people back into the labor market?

Secretary HERTER. Yes. Very recently there has been a study that I think will be made available to you, made on the whole question of the labor problem in Russia.

(The study referred to appears on p. 283 in appendix 2.)

It is an extremely interesting one from the point of view of the present situation and the relationship of women at work compared with men and the very large excess number of women over men that exists in Russia today.

There is certainly every reason to believe that Mr. Khrushchev's announced reduction of the armed forces was an effort to increase the male labor force by taking the extra men out of the armed services when he said he was planning to reduce from some 3,600,000 down to 2,400,000; that the principal purpose of that was to get a larger working force.

EFFECT ON SUMMIT CONFERENCE OF KHRUSHCHEV'S INTERNAL PROBLEMS

Senator CARLSON. Is it not reasonable to assume, then, that Mr. Khrushchev does have some problems, internal problems, and that that may have some effect on his actions and his decision at Paris?

Secretary HERTER. That undoubtedly is true. He has had some other internal difficulty that you undoubtedly know about, Senator, in

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connection with the new land that was planted, an area that has not been too successful and this was something on which he had banked very heavily to increase the food supply of Russia and I think he had been rather heavily criticized because it hadn't worked out as planned.

Senator CARLSON. That is all, Mr. Chairman.

The CHAIRMAN. Senator Gore?

ISSUANCE OF PRESIDENT'S ORDER SUSPENDING U–2 FLIGHTS

Senator GORE. Returning, Mr. Secretary, to the examination of whether there was a breakdown in coordination and administrative procedure, I would like to inquire when you personally first learned of the President's order that the U–2 flights would be discontinued?

Secretary HERTER. At the time that he gave it.

Senator GORE. When did he give it?

Secretary HERTER. My recollection is that it was immediately after meeting at the White House on Thursday morning at about noon.

Senator GORE. Did he give the order to you?

Secretary HERTER. No, he did not give the order to me. I think it was through General Goodpaster, but I am not quite certain.

Senator GORE. How did you know that it was given?

Secretary HERTER. I heard him.

Senator GORE. You heard him give the order?

Secretary HERTER. Yes.

Senator GORE. And this was on Thursday?

Secretary HERTER. This was on Thursday.

Senator GORE. Then you do not know whether this information was communicated to the Vice President?

Secretary HERTER. I have no idea.

Senator GORE. He was not present?

Secretary HERTER. He was not present.

Senator GORE. Was this at a meeting of the Security Council?

Secretary HERTER. No, I don't think it was the Security Council. I think it was at the meeting immediately after the Security Council at which there were three of us present. Allen Dulles was not present and I have forgotten—I think Gates was present—after a Cabinet meeting it was.

Senator GORE. I don't understand.

Secretary HERTER. After the Cabinet meeting.

Senator GORE. After the Cabinet meeting?

Secretary HERTER. Right.

Senator GORE. That settles that. You heard the order issued, and I will have no further question as to where it was issued and to whom. If you heard it issued to Secretary Gates, that settles one question definitely and finally.

But you do not know whether the Vice President was informed about it?

Secretary HERTER. Excuse me——

Senator GORE. Did you wish to add something?

Secretary HERTER. No, no.

Senator GORE. You do not know then whether the Vice President was informed about it?

Secretary HERTER. No, I do not.

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QUESTION OF PRESS SECRETARY HAGERTY'S KNOWLEDGE OF SUSPENSION OF FLIGHTS

Senator GORE. On this question of coordination or lack thereof, in addition to NASA and the State Department, to which Senator Morse referred, there is the State Department, CIA, NASA, Mr. Hagerty, and officials within the Department and perhaps others.

Did Mr. Hagerty operate in this field strictly as press secretary or did he undertake some Executive function?

Secretary HERTER. I know of no Executive function that he assumed.

ISSUANCE OF STATE DEPARTMENT AND NASA STATEMENTS OF MAY 6

Senator GORE. Mr. Dillon, on May 5 Mr. Hagerty, I understand, told a press conference that the State Department and NASA would issue statements. Were you aware of this?

Mr. DILLON. I have very recently learned that he indicated that NASA would issue a statement as such.

It was decided that the State Department would issue a statement. I hadn't been aware that he had said we were. But it had been decided and he knew it had been decided that we were going to do it.

Senator GORE. You say you very recently learned this. How recently?

Mr. DILLON. I think a day ago or 2 days ago that someone from the press said that he had told the press when they were there that NASA would issue a statement, so that they could get their information from NASA.

Senator GORE. Did Mr. Hagerty suggest to you that the State Department issue a statement?

Mr. DILLON. No, it was decided when we first heard of this, this news, as I said earlier this morning, at this National Security Council meeting or right after it that was held outside of Washington, that the State Department would handle the publicity on this, and that we would make any statement that would be made, and it was known at that time that we would make a statement.

Now Mr. Hagerty was not at the Security Council meeting, but he was at that area out there where this exercise was taking place and so he was aware of the fact that the State Department would be making a statement at noon that day at our regular press conference time.

Actually, the statement was delayed 45 minutes. It was made at 12:45 when our regular daily press conference took place.

Senator GORE. Was it decided there that NASA would make a statement also?

Mr. DILLON. It was not to my knowledge, no. It was not decided there that NASA would make a statement.

Senator GORE. Who made that decision?

Mr. DILLON. I think that you have to ask NASA. I don't know who made any such decision.

The fact is, as I have said earlier, I thought that NASA would answer questions.

I didn't know they were going to make a statement until I saw it.

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Senator GORE. You don't know whether NASA or whether Mr. Hagerty made that decision?

Mr. DILLON. I have no idea, no. I would assume NASA made it because we did know that NASA would have to answer questions because this was a NASA plane that was lost and the reporters were going to find out how high the plane flew, what kind of a plane it was, anything they knew about it, and we had given them—the Intelligence Agency had given them good answers on how to answer such questions.

Senator GORE. You say you assume this. You did not know it?

Mr. DILLON. I knew they had given them that material. I knew that as a fact, but we did not know that they were going to use that and put in into the form of a statement as it actually came out.

Senator GORE. But Mr. Hagerty did know that a statement by NASA would be made?

Mr. DILLON. I don't know that what he said meant that he knew they were going to make a formal statement or whether he was just using that as a phrase, indicating that they would answer questions.

He may have thought they were going to make a statement. I just don't know that. He may have called them up and asked them. I don't know.

Senator GORE. Did, in fact, both the State Department and NASA make statements subject to Mr. Hagerty's notice to the press that they would do so?

Mr. DILLON. The State Department made its statement and NASA made one about three quarters of an hour later, yes.

[Deleted].

Senator GORE. My time is up, Mr. Chairman.

The CHAIRMAN. Senator Williams?

Senator WILLIAMS. No questions.

The CHAIRMAN. The Senator from Ohio.

PREMIER KHRUSHCHEV'S KNOWLEDGE OF OVERFLIGHTS

Senator LAUSCHE. When did the Camp David meeting take place with Khrushchev?

Secretary HERTER. I am terribly sorry——

Senator LAUSCHE. When did the Camp David meeting take place with Khrushchev?

Secretary HERTER. That was in September as I recall it.

Senator LAUSCHE. Did Khrushchev, before May 1, make any statements indicating that the Soviet had knowledge of American reconnaissance planes over their territory?

Secretary HERTER. None.

Senator LAUSCHE. Based upon his statements and upon the knowledge which he claims the Soviet possess, what day was it that he understood the first American plane flew over the Soviet?

Secretary HERTER. I can't identify that. My recollection is that when he was in Paris he made the statement that he knew about these overflights at the time that he was at Camp David and that he thought there was something fishy about President Eisenhower at that time.

Senator LAUSCHE. Well, then at Camp David he did state that at that time he knew that our planes were flying over the Soviet.

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Secretary HERTER. That is what he said later when he got to Paris.

Senator LAUSCHE. When he got to Paris?

Secretary HERTER. When he got to Paris. He never mentioned it at Camp David or at any time between Camp David and Paris.

Senator LAUSCHE. Well, if he knew at Camp David that our reconnaissance planes were flying over the Soviet, and he said nothing about it, can you give any reason for his remaining silent on the subject?

Secretary HERTER. He was asked that question in a press conference in Paris.

I haven't got here the exact words of response but I think we could dig them out for you, and tell you just what he said in answer to that himself, but as I recollect, he said he felt that this was an inappropriate moment to bring it up but that he did think there was something fishy about the President at that time.

Senator LAUSCHE. Then at Camp David, when he knew that our planes were flying over his land, he was discussing what was to be the summit conference; is that correct?

Secretary HERTER. What he hoped would be the summit conference.

Senator LAUSCHE. And if we take him at his word, at that time he hoped to have a summit conference although he knew then that we were supposedly committing a flagrant transgression against his rights.

Secretary HERTER. That is correct, from his own later testimony.

Senator LAUSCHE. Can you reconcile those two positions as both being true, one that he honestly intended to attend a summit conference and, two, that he knew our planes were flying over his land?

Secretary HERTER. No, it would be very difficult to reconcile the two. It is very difficult particularly to reconcile the tremendous issue that he made of it later when he knew about it all the time, according to his own statement.

Senator AIKEN. Will the Senator yield? You will find on page 16 of the Background Documents Khrushchev's statement that Twining, the then Chief of Staff, sent a plane over Russia which went over Kiev the day after he left Russia. It is the third paragraph on page 16. (See appendix 1, p. 191.)

Senator LAUSCHE. Yes. Your recollection is that the meeting took place last September.

Secretary HERTER. Yes, sir.

Senator LAUSCHE. Now then, from September to May 14, was that the day he came to Paris, he said nothing about this knowledge that he had, was supposed to have had while he was at Camp David.

Secretary HERTER. That is my recollection. I would want to check on that. It is possible that he may have said something at the Presidium meeting before he left Moscow. My expert here tells me he did not, and that was my recollection that he had never mentioned it until he got to Paris.

Senator LAUSCHE. Can one rationalize the furor of his resentment in May of 1960 compared to his admitted silence at Camp David about similar flights?

Secretary HERTER. No; one cannot.

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INFORMATION GATHERING OPPORTUNITIES IN THE UNITED STATES AND IN THE U.S.S.R.

Senator LAUSCHE. Now then, last January 18, Allen Dulles appeared before our committee, and at that time he merely scratched on the surface what I thought was a very vital question: the comparative ease with which the Soviet gets information in the United States and the impregnable wall that bars us from getting news in the Soviet.

I ask you the question, Mr. Herter, to give your understanding of the facility with which we get information out of the Soviet, and that which they get out of the United States.

Secretary HERTER. Senator, as you know, we have what we call an open society. We are very proud of it in which we have complete freedom of the press, in which, except for matters of highest security, very freely talked about, and a great deal is published.

Our technical magazines publish a great deal from the point of view of vital military information. Our installations in this country, while no direct overflights are permitted, can be photographed with comparative ease from an angle of one side.

Generally speaking we have had no restrictions at all on travel in the United States except for a few very small circumscribed areas, like the Atomic Energy Agency plants, and we have had restrictions on Soviet citizens traveling in this country which have been taken entirely as a retaliatory measure because of the limitations put on the travel of Americans in Russia.

Senator LAUSCHE. Right.

Secretary HERTER. The Soviet society, as you know, is a closed society, where one moves and goes only where they tell you you can go or when they tell you you can go.

Senator LAUSCHE. This morning in answer to a question, assuming that a Soviet plane was over the United States and what we would do about it, you said that there is no need of them sending planes for reconnaissance purposes because they can get the information without going through that effort.

Secretary HERTER. That is quite so.

Senator LAUSCHE. That is, they can go to Cape Canaveral and pretty simply see what is going on there.

Secretary HERTER. Well, sir, there are newspaper men down at Cape Canaveral all the time and a good many visitors.

Senator LAUSCHE. Now the fact is that:

> The Soviets still consider that secrecy and the security of everything relating to their military operations is one of their great assets, and they have no intention whatever of changing that. Moreover they have no intention of letting us into areas of miltary importance.

Those are the words of Dulles.

That is, there is a difference between the Soviet getting information here and our getting it in the Soviet.

Secretary HERTER. Oh, a very great difference. It is the whole difference between an open and a closed society.

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PROPOSED PASSPORT LEGISLATION

Senator LAUSCHE. You have been asking for this Congress to pass a bill that would give the State Department some limited control over Communists going to the Soviet Union. Is that correct?

Secretary HERTER. That is correct.

Senator LAUSCHE. And why have you asked that?

Secretary HERTER. Because we felt that we ought to have some control—these are American citizens traveling abroad—that we ought to have some control over those who may be going to various parts of the world in interest inimical to those of the United States.

Senator LAUSCHE. And you asked that because you have in mind the grave dangers that lie in the ability of a Communist to distribute information in the Soviet Union when he makes the visit, if he so desires.

Secretary HERTER. Yes, sir.

Senator LAUSCHE. That bill has not been acted upon; is that correct?

Secretary HERTER. That is correct.

POWERS OF THE CENTRAL INTELLIGENCE AGENCY

Senator LAUSCHE. Is there any type of legislation that you feel that we ought to pass with respect to the curtailment of the duties and the powers of the Central Intelligence Agency or the expansion of them. If you have given that subject no thought, you can state it.

Secretary HERTER. I have given it no thought. I hope there would be no change so far as the activities are concerned. [Deleted.]

Senator LAUSCHE. That is all I have.

ALLEGED FRENCH NEWSPAPER ACCOUNT OF OVERFLIGHTS

The CHAIRMAN. Mr. Secretary, there was one statement that I was told when I was in Paris that an account of overflights of the Russian territory had been carried in a French newspaper some 30 to 60 days prior to that.

Have you ever heard of such account?

Secretary HERTER. I think I heard the same reports in Paris but I never saw any documentary proof of it.

The CHAIRMAN. Have any of your people tried to confirm it?

Secretary HERTER. Yes, but I have not heard it mentioned by anyone except when I was over in Paris, too. I had not heard a word before that.

KHRUSHCHEV'S MAY 5 REFERENCE TO OVERFLIGHTS

The CHAIRMAN. [Deleted.]

In his speech of May 5, Mr. Khrushchev referred to the U.S. overflights of July 2, 1956, April 9, 1960, and May 1, 1960. He said that the April 9 flight caused concern within the Soviet Government and resulted in admonishments to the Soviet military not to let it happen again.

[Deleted.]

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KHRUSHCHEV'S INTERPRETATION REGARDING CONTINUANCE OF OVERFLIGHTS

The CHAIRMAN. This, again, raises this point that puzzles me very much. The evidence is quite clear that Mr. Khrushchev, if he didn't know positively, certainly suspected that it was our planes that were going across his territory, didn't he?

Secretary HERTER. That is what I assume.

The CHAIRMAN. And it comes back to this point that he hadn't raised such a terrible fuss about it until this one, that is, the May 1 flight, which was shot down. And, you said you couldn't reconcile the difference in his attitude toward the prior flights to the attitude toward the May 1 flight. But doesn't the reconciliation, if it is explainable at all—I am just asking you if there is one—does it not lie in the fact that our Government did take the position regarding the May 1 flight and this program, that this is a deliberate program which we, the President, takes responsibility for, and which we intend to continue?

Secretary HERTER. Not which we intend to continue. That has never been said.

The CHAIRMAN. He interpreted it as such. Mr. Khrushchev in his statement, which I have a copy of here—this is his language. He says—this is a quote from part of our Background Documents (see p. 204, appendix 1) which says:

> At his press conference, Herter made an outrageous statement. Far from feeling guilty and ashamed of aggressive actions, he justifies them and says that this will continue in the future. Only countries which are in a state of war can act in this way. * * * Herter's statement has made us doubt the correctness of our earlier conclusions that the President, the American Government, did not know about the flights. Herter's statement says that this intelligence plan was endorsed by the Government.

At least that is the way he interpreted it, and, as we said before——

Senator LAUSCHE. Who is "he"? Who interpreted it?

The CHAIRMAN. This is a quote from Mr. Khrushchev's statement. He is interpreting what Mr. Herter said as speaking for the Government. But is this not at least a possible reconciliation of the difference in attitude between the prior flights and the May 1 flight?

Secretary HERTER. It might be if one wanted to interpret the words that I spoke that way. There was no need of his interpreting those words that way. Certainly from what I said, that is a very far-fetched interpretation. I think he was interpreting it for his own purposes that way. I think that the one reconcilable feature between those two things is that in one case he had specific evidence and in the other case he did not.

The CHAIRMAN. Then it is your position that neither your statement nor the President's press conference can legitimately be interpreted as an endorsement and justification of the flights and a policy of pursuing them in the future?

Secretary HERTER. Certainly not the policies of pursuing them in the future. The President's statement that was made in Paris said it was perfectly clear from what I had said and from what he had said that there was nothing that allowed that inference.

The CHAIRMAN. Did you in your background news conference in Paris on Sunday, May 15, repeat the same statement that you had made prior thereto in Washington?

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Secretary HERTER. I was asked at that background press conference whether or not I had made a statement that we would continue doing this. I repeated the very words that I had used in my statement. I said I stood on those. That did not imply that we would continue.

The CHAIRMAN. Prior to that second statement, Mr. Khrushchev had so interpreted it. Were you aware that he had so interpreted it in his statement to the Presidium?

Secretary HERTER. I think I may have been, but if one took cognizance of every interpretation of his of everything that happens in this country one would be spending all one's time trying to correct his statements.

The CHAIRMAN. You believe that it is an unreasonable and far-fetched interpretation of your statement or the President's in his press conference that these would be continued; is that correct?

Secretary HERTER. Yes, I do.

The CHAIRMAN. Is it or is it not a fact that the press in this country interpreted it in that same fashion?

Secretary HERTER. I am told that some did and some did not.

The CHAIRMAN. It might have been wise for us to clarify at that time so that we interpreted it properly; don't you think?

Secretary HERTER. That, as I think I have indicated earlier, referred to the cessation of the flights and not resuming the flights. The President had reserved to state in Paris in conjunction with the fact that he was going to offer at the United Nations his plan for aerial supervision of all nations that would be willing to submit to it.

The CHAIRMAN. Do you believe that any head of state, of any important nation at least, could proceed with negotiations at a conference under the situation, at least as he interpreted it, that is, that we intended to continue such flights?

Secretary HERTER. After all, Mr. Khrushchev arrived in Paris and made an arrival statement there the Saturday before the conference saying that he expected to proceed and have fruitful results.

The CHAIRMAN. For the record, in order that it is clear what is involved here, I would like to read one sentence, the one that is referred to by Mr. Khrushchev, which I think you clarified. I quote from the statement that was made by the Department of State on May 7 (see p. 187, appendix 1):

> The necessity for such activities as measures for legitimate national defense is enhanced by the excessive secrecy practiced by the Soviet Union in contrast to the free world.

I think that is the statement that led to the interpretation, don't you?

Secretary HERTER. I am sorry, sir, I have got before me now the statement of May 7. Which were those words?

The CHAIRMAN. It appears on page 12 of the background documents prepared by the staff, the first paragraph at the top of page 12.

Secretary HERTER. That does not in any way intimate that they would go on.

The CHAIRMAN. You do not believe that that could reasonably be interpreted as meaning that they will continue?

Secretary HERTER. No.

The CHAIRMAN. My time is up.

Senator Wiley?

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KHRUSHCHEV'S SPEECH AT BAKU

Senator WILEY. Mr. Secretary, I have listened to this examination, and as you brought out, Mr. Chairman, I think that what we had better do is get down to what I think is the basic issue, not what was said or particularly done, but let's see what Khrushchev did.

On April 28, in what has been called the speech at Baku, an examination of that speech shows clearly that the Soviet Government had come to the conclusion that it would get nowhere at the summit conference. Now, listen to this:

> Overnight all the Government-controlled radio stations—

and get the date, May 25—

> all the controlled radio stations and newspapers in the Soviet Union began to prepare the people for a summit failure, and flatly blamed the West. The same bitter tones which Khrushchev used in Paris is to be noted in what he said at Baku.

And Baku was days before.

> In a violent attack in Baku on Secretary Herter and Under Secretary Dillon, on that same day, the Soviet Premier intimated that he planned to use military power to enforce the prospective seizure in the West.

I quote Khrushchev:

> If, therefore, the Western Powers should not wish to sign a peace treaty with the German Democratic Republic, that would not preserve for them the rights on whose preservation they insist. They would then obviously lose the right of access to West Berlin by land, water, or air.

In another portion of his speech, the Soviet Premier practically admitted that he had no hope of reaching any agreement at the summit conference.

He said:

> The nearer May 16, the day of the meeting of the heads of Government, approaches, the more one-sided becomes the approach of certain statesmen of the Western Powers to the problems the participants of the conference will have to face.

Then he goes ahead and gives examples attacking Herter and Dillon.

KHRUSHCHEV'S DECISION TO SCUTTLE CONFERENCE

Now I want to quote this. This morning I called your attention to this young Russian that stepped out from the intelligence department of the Russian Government, who was heard on the radio. He said, and I quote:

> The Soviet Communist regime is in no way interested in allowing so popular a man as the American President to come to the Soviet Union. They are definitely afraid of the impact such a visit can make on the people.

Now if the issue is what caused Khrushchev to shoot his wad, so to speak, I think it is very clear that when he found out, one, that he couldn't make an impression upon his associates who were to be at the conference; two, that Mao Tse-tung and the Chinese were unhappy and Mao Tse-tung laced him up and down about this conference, as the record shows, when he found out that they didn't want it; three, that he was having trouble with his own gang in Russia; and, four, that the youth of Russia were simply getting all fed up—he

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decided before he went to Paris that he was going to let the balloon go up.

It wasn't the question of U-2. That may have given him the ostensible opportunity to blow his top, but, as a matter of fact, he was all ready to go days before.

PROCEDURAL DISCUSSION

Now if that is the fact, and I think it is sustained by the people who weigh the evidence, then there is no need of our inquiring into what some folks feel. They may be a little remiss hither and yon in our own public service. They were laboring under deep pressure. When you put yourself in the President's boots and go over there and see what he took, you have to say, "God bless him. He held his temper and he handled himself so that he made all America and all the world proud," and the result was as suggested, as the record now shows. Look at the U.N., look at Britain, what they say about it. And the answer, I think, is that we should just about stop our investigation and not try to ball up further the issue.

The CHAIRMAN. For the record I will say that the President, yesterday morning, heartily endorsed this inquiry.

Senator WILEY. That what?

The CHAIRMAN. The President himself said in my presence that he heartily endorsed this inquiry, and if the Senator wishes to take issue with the President, why I suggest he talk to him about it.

Senator WILEY. Oh, no. I heard him say that. I am not disputing his saying it. I am just simply saying that where do we go from here now?

Are we going further, are we going to try to ball up the agency that gets the information, that has done such a tremendous job, that for 3½ years has given us information.

[Deleted.]

The CHAIRMAN. I think the Senator misunderstands the purpose of this meeting. It is not to ball up anything. It is to try to clarify a situation for the benefit of the committee and the Senate and the country. And I know of no one who has the slightest purpose of balling up anything.

Has the Senator completed his questions?

Senator WILEY. Yes, I am sorry that I used that expression. What I meant was "confuse," and if there is going to be further evidence, would you mind telling me who the next witness is?

The CHAIRMAN. There will be no other witnesses this afternoon.

Senator WILEY. Well, do you expect to call some later on?

The CHAIRMAN. Yes, Mr. Dulles is coming on Tuesday.

Senator Mansfield—is the Senator through?

Senator WILEY. No, that is the point I am making. I want to state in all sincerity, gentlemen, it is your responsibility if you want to call this man who has created this agency under the mandate of the Congress, that we have appropriated money for, and have not tied his hands and he is the one who brought about this; let us be frank.

(Discussion off the record.)

The CHAIRMAN. The Senator is misinformed if he thinks that type of testimony is going to go in the public record. There was no intention at any time of putting this in the public record.

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Senator WILEY. Did you hear yesterday when the distinguished Senator from Ohio very plainly and bluntly talked about the leaks. I belong to a committee where I have seen them go right from the committee room right out in front of the fellows who have the mechanisms for giving the news. This is the first time I have blown my top, but I am simply telling you in the interests of my country, I think you should not call in this other agency. I think that these gentlemen have told what the public knows now, but to bring in this other agency, I think would be a mistake.

The CHAIRMAN. Does the Senator say that he knows Senators who have gone out of executive sessions before the microphone and repeated what has been said here?

Senator WILEY. I am not putting my finger on any Senators. If you want to know what is going on what have they got the television out there for and you are quoted every day as appearing before it.

Let's be frank. This is not the only committee where they spill the beans. But I am talking about the Central Intelligence Agency, gentlemen. I happen to know something about it, and I know what it means, and people over in the House know what it means, and I sincerely hope that you will not bring Dulles before you. That is all I have to say.

The CHAIRMAN. Senator Mansfield.

JURISDICTION OVER THE AIRSPACE AND THE HIGH SEAS

Senator MANSFIELD. Mr. Secretary, in an attempt to clarify some of the confusion which exists in some of our minds I would like to ask some questions:

What is your present official interpretation of international law as regards the extension of national sovereignty skyward?

Secretary HERTER. I don't think we have any.

Senator MANSFIELD. We have no international law in that field as yet?

Secretary HERTER. That I know of. There is no definition as to what is considered the atmosphere above the air. There is no accepted interpretation or verbiage when they are talking about the atmosphere.

Senator MANSFIELD. Would you think it advisable to have an international conference or conferences to decide the question of sovereignty in the air over a country and also the possibility of regulating the seas in a more orderly fashion?

Secretary HERTER. Well, as you know, we have tried for over a year to get the United Nations to get the outer space committee organized and underway.

Senator MANSFIELD. At our suggestion?

Secretary HERTER. At our urging. We have been urging that this be done. We have been pressing it. We have not been able to make any headway because the Russians refused to go along. There have been further discussions of this proposal but we have been unable to agree on who should carry it out. I think we are making progress but it is still one of those things where there is a constant dispute as to what should be done.

Not only that but we had hoped to get it adjusted in time so that this year there could be a great international scientific congress be-

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cause you're dealing with new matters that the scientists are expert in that the layman is not, and the Soviets were unable even to allow the calling of that congress.

Senator MANSFIELD. No. In other words, as yet there is no clarification of this particular matter.

Getting back to my statement concerning regulation of the seas, we, of course, operate under the doctrine of freedom of the seas. But what I have in mind is the fact that it is my understanding that the Soviet Union can launch missiles anywhere it wants to up within, say, three miles of our coastline if it is in our vicinity, and we have the same right under international law to fire missiles up to 3 miles, say of Vladivostok. Is that correct?

Secretary HERTER. Yes, and it depends again on what one takes as the territorial waters. Three miles have been the generally accepted territorial limit. The Soviet Government has claimed 12 miles and, as you know, the recent Geneva Conference failed in reaching agreement among the nations as to what should constitute the territorial water of different nations.

Some nations have gone much farther than that, particularly with regard to fishing rights.

Senator MANSFIELD. That's right, but what I have in mind is that times have changed considerably, even in our generation.

Mr. Chairman, may we have order in the committee?

The CHAIRMAN. It is difficult to have order.

Senator MANSFIELD. The fact is that we have these satellites going skyward hundreds of miles and we have these missiles going thousands of miles into the ocean. It was because of these new factors that I offered the suggestion that it might be well to have international conferences to take heed of changed conditions in this modern day.

We have also advocated, as you are aware, peaceful uses of outer space, and we have made no headway.

[Deleted.]

The CHAIRMAN. Senator Gore?

Senator GORE. Mr. Chairman, the first question I wish to pursue leads to a question of Mr. Bohlen. Since others have asked him questions, I wonder if I might ask that he return.

STATE DEPARTMENT'S KNOWLEDGE OF U–2 FLIGHTS

Mr. Secretary, Secretary Dillon testified this morning that he did not know of this particular flight, and to the best of my memory you said you were away at the time and did not know of this particular flight.

Secretary HERTER. I knew of the program. I made that clear in which the flight was included but not that particular flight.

Senator GORE. I was specifying this particular flight. Did I correctly understand both of you?

Mr. DILLON. Yes, Senator. I had heard about 6 weeks earlier that a series of flights would be undertaken and I had not heard anything since that time but it was not in my regular order of business.

Senator GORE. Would you repeat what you said? I did not understand it.

Mr. DILLON. I said I was informed about 6 weeks before the date of this flight, I say, that there was a program of particular flights of which this one could have been a part, and I did——

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Senator GORE. It could have been but you did not know of this particular one.

Mr. DILLON. No; I did not know any more than that of this particular flight.

QUESTION OF DECISION NOT TO HALT PROGRAM OF U–2 FLIGHTS

Senator GORE. The President, in his statement to the American people, the other night, said this:

> As to the timing, the question was really whether to halt the program and thus forego the gathering of important information that was essential and that was likely to be unavailable at a later date. The decision was that the program should not be halted.

Now, as I understand your reply to the chairman of the committee, you did not participate in the making of a decision to halt or not to halt this particular flight.

Secretary HERTER. I had approved of it.

Senator GORE. On this particular program.

Secretary HERTER. And approved of it as a part of the program. The question of the halting of it was not in issue at that time although I knew that the summit conference was coming.

Senator GORE. Well, my specific question is this: Did you participate in a conference or were you aware of a decision; did you make a decision? What is the full extent of your knowledge of a decision that the flight would not be discontinued?

Secretary HERTER. I know of no conference at which that matter was discussed.

Senator GORE. Then would it have properly been——

Secretary HERTER. The only matter that came before me was the approval of this program.

Senator GORE. How long ago did you approve the program?

Secretary HERTER. I can't tell you exactly, but it was some time prior to the time I went abroad.

Senator GORE. Is it a matter of weeks?

Secretary HERTER. A matter of weeks.

Senator GORE. Would such a decision have been properly within the province of the State Department?

Secretary HERTER. No. The State Department would not have a final decision in the matter. The State Department would have an advisory position in the matter, and the CIA did consult with us about it.

[Deleted.]

PROCEDURAL DISCUSSION

Senator GORE. I understood the purpose of this hearing was to develop the facts insofar as we were capable of doing so, and to the extent that security would permit, to make available the facts to the American people.

Do I correctly understand the purpose of the hearing?

The CHAIRMAN. The Senator from Tennessee understands it as I understand it in spite of the opinion of the Senator from Wisconsin.

Senator LAUSCHE. May I ask, is it——

Senator WILEY. You might as well just now.

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Senator LAUSCHE. Is it confined to what our Government has done or are we concerned about what the Soviet has done?

The CHAIRMAN. I certainly am concerned about what the Soviet has done.

Senator LAUSCHE. It hasn't been manifested here today.

(Procedural discussion.)

The CHAIRMAN. The Senator from Tennessee has the floor.

Senator WILEY. May I just say one thing?

The CHAIRMAN. Does the Senator yield to the Senator from Wisconsin?

Senator WILEY. I realize when I hit the ceiling before that I was probably not as coherent as I should be. I want to say to you with the conviction of a man who has lived long, that the business of a committee like ours is to develop facts for legislation, facts that are necessary to bring out curative legislation, or if you please, if you want to investigate an individual, that is another thing. We had the McCarthy hearings. We know what that did, but here is another angle.

It is not the business of this committee to expose to the people of this country a mechanism that is so important to preserve the life and integrity of this country, and I mean the CIA, I know what it means. I happen to know something about what it has done [deleted] and to me, at least, and as I say, as a young man of past 70 summers, please remember that when you go into this thing, as you are going into it, you are going to expose a mechanism that is as vital to the life of this country as anything you can think of.

It is that mechanism that made possible this series of three and a half years of exploratory missions over the Soviet Union [deleted].

If that is what you are going into, just count your words.

Senator GORE. Mr. Chairman?

The CHAIRMAN. The Senator from Tennessee.

Senator GORE. Dealing with the CIA is not a new experience for me. I happen to have handled in the House of Representatives the appropriation bill for the Atomic Energy Commission for 5 years before I was elected to the U.S. Senate.

I was party to the appropriation for the atomic energy program when the atomic bomb was being built in my State. No one ever heard those secrets from my lips. Every year for the past 14 I have listened to the testimony of the CIA from one to two or three or more times. I don't think that it is necessary that we violate the security of this country in order to hear Mr. Allen Dulles' testimony.

The CHAIRMAN. Will the Senator yield? Mr. Dulles said to this committee when he was asked if he would appear, that he would be very pleased to appear. He thought it would serve a useful purpose. He had no objection.

Senator GORE. I am aware that I am pursuing very important questions that reflect upon the effectiveness of our country and the prestige of our country. That is all the more reason why they should be pursued.

I thought this was the purpose of the hearing, to develop the facts, and insofar as they could be revealed to the public, to do so.

The CHAIRMAN. The Senator is quite right.

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QUESTION OF DECISION NOT TO HALT PROGRAM OF U–2 FLIGHTS

Senator GORE. To return to the question, insofar as either of you know, or any official of the Department, no actual decision to proceed with the flight or not to proceed with the flight was made.

If such a decision was made, it was beyond your knowledge. Is that a correct statement?

Secretary HERTER. Yes; I think that I ought to say this. When the matter came before me, I had an opportunity of disapproving it and did not do so. Not it, but the program.

Senator GORE. But this particular flight did not come before you?

Secretary HERTER. It came as one of a group.

[Deleted.]

NOTICE TO SECRETARY HERTER OF PLANE'S MISFORTUNE

Senator GORE. When did you first learn of the plane's misfortune?

Secretary HERTER. I received word in Ankara, Turkey, that a plane was down. That is all.

Senator GORE. From whom did you receive it?

Secretary HERTER. It was handed to me from a slip of paper that Mr. Livingston Merchant had. He was sitting behind me at a NATO meeting and he handed me a slip of paper, "word has come that [deleted] a plane is missing."

I don't think he said in Russia. I didn't know which one of the flights it was.

Senator GORE. It is your presumption that this was a communication within the Department?

Secretary HERTER. Oh, yes. I assume it was either in the Department or from CIA sources with whom we are constantly in touch overseas.

Senator GORE. I believe my time is up. I will return to this.

[Deleted.]

PARIS PRESS BRIEFING BY AMBASSADOR BOHLEN

The CHAIRMAN. You had one question of Mr. Bohlen. He was called back at your request.

Senator GORE. Yes. If I may digress a moment, I have been told several times, Mr. Bohlen, that in your press briefing at Paris, I believe on this 16th, you expressed the view that except for the U–2 plane, there would have been a summit conference.

Will you relate to us what you said at this briefing in this regard?

Mr. BOHLEN. I don't recall, Senator, honestly that I made that statement——

Senator WILEY. A little louder, please.

Mr. BOHLEN. I don't recall that I made that statement. The press briefing that I held on the 16th was an open press conference on the record, and I do not recall any statement of that kind because my view then as now is that the U–2 was one of the factors that may have led to the particular Soviet behavior at Paris.

I really do not recall any such statement of that kind. It's all on the record. This was an open press conference.

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Senator GORE. You did not hold an off-the-record background briefing?

Mr. BOHLEN. I held a background later in which I outlined at that conference the three factors that I believed and still do entered into the formulation of the Soviet position.

Senator GORE. Was a transcript made of that background briefing?

Mr. BOHLEN. I would have to check on that, sir. I think there probably was.

Senator GORE. Would you supply it to the committee if there was?

Mr. BOHLEN. If there is one, I would have no views on it.

Secretary HERTER. I would have no objection.

(The transcript referred to was subsequently furnished for the confidential use of the committee.)

Mr. BOHLEN. If there is a transcript of it, but I recall the circumstances very well in this, in that three factors that I mentioned earlier, the Soviet pessimism as regards the outcome of the summit from their point of view; the possible opposition or questioning of its conduct and the U–2 matters were the three factors that appeared to me to have entered into Soviet decision to torpedo the conference.

I might add, Senator, for clarification on this, we have used the words "scuttle the conference" quite often.

There are various ways of scuttling a conference. You can scuttle a conference before it begins or you can sabotage it from within [deleted].

[Subsequently, Mr. Bohlen made available to the Committee the following statement of views he held in Paris at the time the Summit Conference came to an end:]

I would like to just briefly note—this is a personal opinion—that there were three elements in this situation:

One, I think, was the situation in Moscow, whereby there were some people who were a little bit concerned about the manner in which Khrushchev was conducting the foreign relations of the Soviet Union, for reasons already touched on.

The second was that I believe that he came to think—or the Soviet Government came to think—that the prospects for any agreement at the summit, on Berlin particularly, which is one that he had committed himself so deeply to, were very dim indeed. Before the plane incident, they were visibly preparing the usual tactic of placing the onus in advance upon the Western Powers for any expected failure. But had there been no plane incident, I believe the conference would have run its full course. There would have been discussions. There would have been the normal, if you want to call it that, the normal type conference with the Russians, of which we have had many in the last 15 years, but without results.

The plane incident, the whole development connecting with that, moved things into a totally new dimension. And I think that the evidence is conclusive, that he came here to Paris with the idea of either torpedoing the conference or conceivably—because you cannot read their full minds—the hope that somehow or other that the pressure from our Allies would force the United States to capitulate. I think he makes this very plain. And this is where he made his major miscalculation. Our Allies stood with us solidly—wonderfully well.

Of course, it is easier to say that now than it was before.

Mr. DRYDEN. I was told that these statements had been cleared by

Mr. DRYDEN. The CIA people with whom we were dealing, sir.

Senator GORE. Off the record.

(Discussion off the record.)

The CHAIRMAN. Does the Senator from Ohio have any further questions?

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DUTIES OF THE CENTRAL INTELLIGENCE AGENCY

Senator LAUSCHE. Mr. Herter, I have in my hand the National Security Act of 1947, and I have read from page 5 that part of the material which deals with the duties of the Central Intelligence Agency.

Are the duties enumerated in this section complete?

Secretary HERTER. Yes; I think those are enumerated in that section.

Senator LAUSCHE. This section didn't place any directions on how intelligence is to be obtained.

Secretary HERTER. No.

[Deleted.]

PRESIDENT'S ASSUMPTION OF RESPONSIBILITY FOR U–2 FLIGHT

Senator LAUSCHE. Based upon the questions that have been asked here today, one set implied that the President should not have told the truth. The next set implied that one of the men lied. And the third set implied that there was an inability to coordinate the views.

Now, my question is—off the record.

The CHAIRMAN. Take it off the record.

We will make a special dispensation, whatever the Senator wishes. Does he wish it on or off?

Senator LAUSCHE. Let it be on. Has anyone given any thought about the peculiar position that the President of the United States is placed in in connection with the paradoxical situation that he is supposed to be a man of truth, and moral character, and yet requested to lie about these matters, if they are within his knowledge?

Secretary HERTER. I am not sure whether that is a rhetorical question or whether you are asking me that question.

Senator LAUSCHE. Well, take it both ways. [Laughter.]

Senator GORE. Rhetorical or oratorical. [Laughter.]

Senator LAUSCHE. Well, let's assume that you were the President, Mr. Herter, and you were faced with the dilemma of telling a lie about what happened or telling the truth. In either event you are hooked. What course would you follow?

Secretary HERTER. I can answer that one so far as I myself am concerned.

The CHAIRMAN. He followed both.

Senator LAUSCHE. I don't know. I am beginning to wonder if what the Central Intelligence Agency is doing ought not to be a matter left with them and without the knowledge of the President.

I have no other questions.

The CHAIRMAN. Mr. Secretary, I just want to make a comment. The Senator from Ohio has put his finger on the very point that perhaps I didn't make clear to him earlier in my inquiry. This is, in my opinion, a central important question about this whole matter, the wisdom of the policy of involving the President in this kind of business, that is, espionage, which traditionally involves lying and cheating and murdering and violating the sovereignty of countries with which a country is not at war and all of this. And what the Senator has said is—perhaps I didn't make it clear—is exactly the point that I was seeking to raise and to elucidate in the first line of questions that I asked. And I agree with him this presents a very difficult

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dilemma, and the question is the wisdom of departing from the traditional historical practice of not involving the head of the state in any espionage responsibilities that he is above and apart from. We follow that in the Congress, as you have just stated. [Deleted.] We treat it differently, and I was suggesting and raising the question of whether it is wise to depart from the traditional practice that all important states throughout history, without exception in accordance with the Secretary's testimony, have followed. That is the very point. I don't think the Senator understood what my point was.

Senator LAUSCHE. I knew if I were President——

Senator WILEY. You would tell the truth.

Senator LAUSCHE. I would tell the truth.

Senator WILEY. So did he.

The CHAIRMAN. He did and this is the answer.

Senator LAUSCHE. And could you expect him to do anything else?

Senator WILEY. That is right.

Senator LAUSCHE. And the only way you could enable him to perform his duty to his country was not by having him know what was done and if he didn't know the question would be pursued why didn't he know.

Senator WILEY. He taught the world a lesson in 1960, new diplomacy, by telling the truth, and I think that it will echo down through the years.

Senator LAUSCHE. So I don't know which group to follow.

The CHAIRMAN. It is echoing down the years already. This is the principal echo that has arisen from this whole matter.

Senator LAUSCHE. The tragedy is that this is made the principal echo but all of the misdeeds of the Soviet are looked upon as inconsequential.

The CHAIRMAN. Well, the Senator is entirely incorrect in that statement. He draws conclusions that are not justified by the record or any statement that I have heard before the committee.

Senator LAUSCHE. Well, I can——

Senator MANSFIELD. Can I ask a question?

[Deleted.]

USIA'S DIRECTOR'S RADIO PROGRAM APPEARANCE

The CHAIRMAN. Do I understand Mr. Allen's statement on the television program was not approved by you or by the Acting Secretary?

Secretary HERTER. No. As I understand it, this was in answer to a question on a TV program.

Senator MANSFIELD. Yes. I think we have the program here. But could somebody on the staff find it right away so that I could read it just as it is? (See p. 212, app. 1.)

The CHAIRMAN. Well, Mr. Secretary, while they are looking for it, is it or is it not the policy of the Department of State that its employees clear public statements with regard to delicate international relations before they make them?

Secretary HERTER. Yes, sir.

The CHAIRMAN. It is the policy?

Secretary HERTER. It is. Any statement dealing with foreign affairs should be cleared with the State Department.

The CHAIRMAN. Then when they are made in this fashion without clearance, it is not in accord with your policy; is that correct?

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Secretary HERTER. Well, as I say, this had not been cleared with us.

The CHAIRMAN. He is an employee——

Secretary HERTER. I think it is very possible that a prepared statement had been cleared, but not an answer to a question. There is no way of clearing that, until one knows what question is asked.

The CHAIRMAN. What I asked this for is because later on it seems to me one of the important things that might come out of this committee hearing is a tightening of the policy which gives the Department of State and the Secretary of State a much closer control over public statements by other agencies. It strikes me that we would get in much less trouble if all these people would clear with you or with whoever is Secretary of State of the Department, we will say. Don't you think that would minimize the chances of inconsistent statements being made by members of the Government?

Secretary HERTER. Yes, that is so. But I think that anything that he may have said in a prepared statement on that TV program at that time had been cleared. Insofar as answers to questions are concerned, there is no way of clearing them without knowing the questions and in that way he was on his own.

The CHAIRMAN. It is his responsibility, then, when he goes beyond anything that had been cleared?

Secretary HERTER. Yes.

Senator MANSFIELD. Mr. Chairman, on page 35 of the Background Documents on the summit conference, about 7 or 8 lines up from the bottom of the page, Mr. Allen, in response to a question from Miss Dodd, states the following:

> There are a lot of different definitions of "spying" and I don't want to try to quibble, but I do think I ought to point this out and that more people ought to recall it: When he went down he told exactly what his mission was and exactly what he was expected to do, and he was under instruction to do that.

Now, the answer to the question, I just thought ought to be in the record, because there was some confusion about this statement in view of information which had been given to a group previously in the Capitol. Again, I want to say, Mr. Chairman, that I am through with my questions of Mr. Herter, but I want to express my thanks to Secretary Herter, to Secretary Dillon and to Ambassador Bohlen for their candor and frankness today and to assure them that I, for one, appreciate what they had to say, and I think they have made a real contribution to clearing up a confused situation which confronted the committee as a whole.

Secretary HERTER. We are very grateful for that, Senator.

Senator WILEY. Of course, on this side of the aisle, I have praised your statement in the beginning and I will praise your conduct in the conclusion. You all did very well.

Senator GORE. Mr. Chairman?

The CHAIRMAN. Senator Gore.

Senator GORE. I do not wish to unduly tire the Secretary, but I am perfectly willing to come back after dinner or to come back tomorrow. I do have many more questions.

The CHAIRMAN. Well, it is my understanding the Secretary—he looks very well to me—would prefer to go on tonight. He does not wish to run over to next week.

Secretary HERTER. I prefer to go on, Mr. Chairman.

Senator GORE. I don't think it will take very long tonight.

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RESPONSIBILITY FOR DECISION TO DISCONTINUE FLIGHTS

The CHAIRMAN. The Senator may proceed.

Senator GORE. Fine.

I wish to resume my inquiry with respect to this particular flight. I am perturbed that you say it would not be within the province of the Department of State to make the decision to discontinue these flights; that this would be a decision for Mr. Dulles to make.

Secretary HERTER. No, I never said that at all.

Senator GORE. I beg your pardon?

Secretary HERTER. I never said that at all. I said he was the operational man who had to plan things, and then submit them for approval.

Senator GORE. Well, what would be the proper agency to consider whether these flights should or should not be discontinued?

Secretary HERTER. If the question of discontinuance had come up, if that was a decision to be made, we would have been asked advice on it. We were not asked for advice on it. We gave approval to carry on with the routine planning that had been done from the point of view of flight.

Senator GORE. Some weeks prior?

Secretary HERTER. Yes, and had given that approval.

Senator GORE. Did that approval——

Secretary HERTER. That approval, as I say, is advice.

Senator GORE. Was advice?

Secretary HERTER. Is advice. The President himself took the responsibility for any final decision.

Senator GORE. Did your approval involve continuation of the flight through and during the period of the summit conference?

Secretary HERTER. Not specifically as such. The approval constituted going ahead when conditions were appropriate for carrying them out.

Senator GORE. Did you give no consideration to discontinuance at a time prior to the summit meeting or during the summit conference?

Secretary HERTER. Senator, I answered that question before when I said that there is no good time for a failure, that if the summit conference had debarred carrying out these flights the President's visit to Russia may have been the next thing that might have debarred them.

It may have been debarred when Khrushchev was at Camp David; it may have been debarred when Mr. Khrushchev was visiting in France.

There may have been any number of diplomatic reasons why they shouldn't be conducted at a given period of time.

In my opinion, the value of the information and the necessity of carrying out these flights under given conditions warranted their going ahead.

Senator GORE. I am trying to be specific in my questions, and I am trying to elicit from you whether at the time you gave your approval for the general program some weeks prior to this particular flight, you gave specific consideration to the question of continuance or discontinuance during or near the time of the summit conference.

Secretary HERTER. Certainly. The summit conference was very much on my mind as it was on everybody's mind, at that time.

Senator GORE. And you gave your approval then?

Secretary HERTER. I did.

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Senator GORE. To their continuation throughout the summit conference?

Secretary HERTER. That was never specified as such.

Senator GORE. In other words, you are saying, then, that there was no decision to discontinue?

Secretary HERTER. That is right.

Senator GORE. Then if any decision to discontinue or if any decision was made not to continue, to use the words, you are not aware of it?

Secretary HERTER. No. The only decision that I know of at any stage of the game was to go ahead.

[Deleted.]

COMPARISON OF STATEMENTS MADE BY PRESIDENT AND SECRETARY OF STATE

Senator GORE. Another statement which the President made, I would like to read:

> Of course we had no indication or thought that basic Soviet policies had turned about. But when there is even the slightest chance of strengthening peace, there could be no higher obligation than to pursue it.

Now, on page 4 of your statement here today, I would like to read. This is on page 4, beginning "Summit prospects dimmed."

Mr. Chairman, I ask unanimous consent that the second, third, fourth, and fifth paragraphs on page 4 be reprinted at this point in the record.

The CHAIRMAN. Without objection it is so ordered.

(The paragraphs referred to follow:)

> In the first weeks after the Khrushchev American visit there was a general improvement of atmosphere and people began talking, partly in hope, partly in some confusion, about "detente." There were comparatively conciliatory speeches on each side; there was progress in the test-ban talks at Geneva; a new Soviet-United States cultural agreement was signed November 21, and on December 1 the United States, the U.S.S.R., and other powers signed the Antarctic treaty.
>
> But clouds began to gather even then. One of the earliest signs was the strong Soviet protest on November 11 against West German plans to build a broadcasting station in West Berlin. Another was the Khrushchev speech on November 14 which was harder in tone, boasted again of Soviet missile prowess, and began a concentrated attack on Adenauer and the German Federal Republic which later increased and seemed to be a central feature of Soviet presummit tactics. The reason for this attack is still a matter for speculation. Perhaps they thought it would undermine the Western position on Berlin by helping to divide the Western Allies. It had no such effect of course, but naturally rallied us to speak out in defense of our German ally.
>
> Khrushchev as early as December 1 also began repeating his threats to sign a separate peace treaty with East Germany. He repeated these threats in his speech to the Supreme Soviet on January 14 and in his remarks during his visit to Indonesia and other countries in January. On February 4, the Warsaw Pact powers issued the first formal blocwide commitment to sign a separate GDR peace treaty. Thus Khrushchev's threatening Baku speech of April 25, though it was the most sweeping since February 1959, was only a harsher version of what he had been saying for months before. I shall make full documentation on his speeches available to the committee.
>
> Not until April did we reply at length to this mounting crescendo of Soviet statements. We did so in order to keep the record straight—notably in the speeches of April 4 and 20, which Khrushchev attacked for starting arguments that he in fact had begun.

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Senator GORE. You will see from this statement, Mr. Secretary, that you contradict the President's statement, do you not?

The President says:

We had no indication or thought that basic Soviet policies had turned about.

From what I have just read, you list one, two, three, four occasions where the Soviet policy had, in fact, changed.

Do you wish to comment?

Secretary HERTER. Yes, I would be very glad to comment.

I don't think that there is any essential disagreement in the two points of view.

I am talking primarily in my statement in regard to Berlin and Germany.

The President was talking about a series of things in which he spoke of disarmament, mutual inspection, atomic control, and then he added Germany and Berlin.

As I testified earlier in the day, I think we all had hopes that there might be a possibility of making some progress, even though not in the German-Berlin situation, but in the disarmament field, and as a corollary possibly in the nuclear testing field where it was not a summit problem, but it would have been a three-power problem that could have been discussed in Paris.

For instance, so long as there was any hope of making any progress, the President was willing to go.

Senator GORE. I didn't question the President being willing to go so long as there was any hope of progress.

What I was asking you to comment on was what appears to me to be a contrast between the President's statement that there is no indication that basic Soviet policies had turned about, and where you give almost a full page indicating that they had turned about. But you have finished your comment on that.

Secretary HERTER. Yes, there was some talk here about basic policy and tactics in connection with the summit. I don't think the President felt events such as I cited necessarily mean that Soviet basic policy had changed.

I think as he said after Camp David, he hoped that there was a mutuality of interest, particularly in the disarmament field, which would allow the great powers getting together in order to make progress in disarmament.

That had always been the area in which he hoped, because of the mutuality of interest, that we might make progress.

I don't think that there is anything fundamentally opposed in these two statements.

EXTENT OF PREMIER KHRUSHCHEV'S POWER

Senator GORE. Now, I want to ask a few questions which relate to the first of the three questions on which I wish to examine your opinion; that is, whether the diplomatic failure in Paris represented a failure in policy.

You recall that I submitted certain questions to you here on March 22. At that time I asked you:

Do you think it would have been more prudent to have had an understanding

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about the subjects to be considered at a summit conference before agreeing to have one, or do you think this is the proper way to keep the store?

Secretary HERTER. It is a gamble. I don't know.

Senator GORE. You are gambling with high stakes, and it seems to me in a reckless manner. I am disturbed to have the Secretary of State make the statements that you have made today about the summit conference; that there is no plan, no purpose, no understanding as to what will be discussed and what we hope to attain there.

Secretary HERTER. Mr. Senator, I view this as essentially a matter of exploration. We have the situation where an individual, Mr. Krushchev, is the man who makes the decisions so far as we know, for the Russians.

Later on, I asked you:

Is there any reason why the Russian dictator could not delegate the same power to his Foreign Minister as President Eisenhower should or does delegate to you?

Senator HERTER. None.

Senator GORE. Then isn't that a fallacious argument?

Secretary HERTER. Not necessarily, because you are dealing with an individual personality who many believe wants to be the negotiator.

Now, I read those things because one of the principal, if not the principal, justifications for going to the summit and for the exchange of visits was that Mr. Khrushchev and he alone spoke for the Russian people, but today you tell us on page 7:

I might digress here to observe that it had been our experience at previous conferences with the Soviets, at least since the death of Stalin, that the Soviet representative, no matter how highly placed he might be, was bound by the collective decisions on basic policy matters made prior to his departure from Moscow. Any substantive changes in those positions apparently required reference back to Moscow before they could be undertaken.

And then on page 8, you say:

This meeting completely confirmed our conclusion of the night before that Mr. Khrushchev was operating within the fixed limits of a policy set before his departure from Moscow.

Secretary HERTER. There appears to be an inconsistency in those two statements.

When I was testifying here before, the visits of Mr. Khrushchev in which sometimes he had an important person with him and sometimes he did not——

Senator GORE. In which what, sir?

Secretary HERTER. Sometimes in which he had an important person with him and sometimes he did not, indicated that his situation at home was such that he had a great deal more leeway than had previously been the case.

When he went to Paris, and I think this has been brought out, he had with him Gromyko and Malinovsky, General Malinovsky, Marshal Malinovsky, who never left him for one moment at any time. This was a departure from previous occasions. This is why we said they had gone back to their standard policy of taking directions from home.

Prior to that time I had believed he had greater leeway than was clearly indicated here in Paris.

Senator GORE. So the assumption proved to be erroneous.

Secretary HERTER. It is.

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USUAL DIPLOMATIC PROCEDURES VERSUS SUMMIT CONFERENCES

Senator GORE. I believe you testified before the House, according to press reports yesterday, that summitry as a diplomatic method had had some hard knocks.

Secretary HERTER. Yes, I did.

In answer to a question from Senator Humphrey, I repeated the same thing today.

Senator GORE. And in recommending, which I certainly endorse, continuing businesslike negotiation with the Soviets, you have in mind the more usual processes and procedures of diplomacy.

Secretary HERTER. That is correct.

Senator GORE. Negotiations.

Secretary HERTER. The one thing that I did point out, however, is that with regard to the Berlin situation, Great Britain, France, the United States and the Soviet Union have responsibility. This is the carryover from the war.

Senator GORE. Yes.

Secretary HERTER. And that there, there must be agreement. This is a thing we have been fighting all the time, that unilateral action by the Russians cannot take away those rights and obligations which they as well as ourselves had acquired as a result of the war.

That it must be done by the consent of the four.

So that whether or not in the future the discussions to reach agreement among the four should take place through diplomatic channels, through ambassadorial level, through foreign minister or not, I would not say which would be the level, but I think that it is much better to see if we cannot, as we did in the foreign ministers' conference, and failed, try to reach a large measure of agreement prior to the meeting of a summit conference so that there might be one or two small unresolved issues that could be resolved there rather than trying to negotiate when you know that you are very far apart at a summit conference.

Senator GORE. Well, I hope that you will persist, and that the President will persist in the businesslike undertakings. I will not ask you to say that summitry apart from diplomacy failed. I am content with your statement in that regard. I am sorry that I think it did fail.

Secretary HERTER. I would differ with you, sir, on the question of personal dipomacy as against summitry. I think that visits are, on the whole, useful things.

I wouldn't say that that was something that should be discarded completely. I think it is particularly true that visits of ministers of foreign affairs, and visits of heads of state from time to time can accomplish a great deal of good. But I believe very strongly that insofar as heads of state are concerned that is not the place to begin negotiations. It is the place perhaps where there should be the culmination of negotiations.

Senator GORE. I will agree with you in that statement. The exchange of visits offers opportunities. But the formalization of a head of state conference, where severe international tensions are involved, without precise planning, without assurance that at least limited

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agreements can be reached, is, in my view, a dangerous process, and a policy upon which we should never have embarked.

Of course, it is easier to say that now than it was before.

Hindsight, of course, we learned a long time ago, is better than foresight.

The CHAIRMAN. Would the Senator yield for a moment? I have one or two questions and then he may come back to it.

Senator GORE. Good.

AUTHORIZATION FOR U–2 FLIGHTS

The CHAIRMAN. These I think have been covered but for clarification, I might ask them again. Was there ever a time when the President authorized each flight in this program; that's never been the practice.

Secretary HERTER. It has never come up to the President.

The CHAIRMAN. Nor of the National Security Council.

Secretary HERTER. No.

The CHAIRMAN. It has always been under a blanket authority understood?

Secretary HERTER. That is my impression.

The CHAIRMAN. Is this blanket authorization under review, either constant or periodic review?

Secretary HERTER. In my experience the CIA has planned a number of alternate flights at a time. [Deleted.]

BACKGROUND OF NASA STATEMENT

The CHAIRMAN. When the Department brought Mr. Bohlen back from Manila, and he was well-known as an expert on Soviet behavior, and this was, I thought, in anticipation of these summit meetings which had been discussed a long time, did he or any other of our Russian experts advise you or the President to wait and see what Mr. Khrushchev knew about the U–2 flight before making the NASA statement?

Mr. DILLON. The people in the Department who were familiar with Soviet policy took part in discussions with the CIA which led to the coordination and the agreement on the guidelines which were given to NASA, and those included the people who were familiar with all aspects of our policy.

However, as we said before, we did not know that there was going to be a full statement by NASA.

The CHAIRMAN. Mr. Bohlen was not consulted about the NASA statement.

Mr. DILLON. Nobody in the State Department was consulted about the statement as a statement.

The CHAIRMAN. Nobody.

What puzzles me about this is why was there such compulsion, if there was, to make such an immediate reaction? I have wondered why there was any necessity for immediately reacting to the first Khrushchev statement.

It would seem to me much more normal to wait a while and see what developed.

Was there anything that was compelling you to answer almost immediately?

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Mr. DILLON. Yes, I would say so. It was such an unusual and remarkable statement when Mr. Khrushchev said that American plane had been shot down over the Soviet Union, that we were not in the position to not make any comment whatsoever.

As a result we had to make some comment, and we made the very bland statement which was put out on the 5th.

The CHAIRMAN. I didn't mean that. You misunderstood me. I accept the necessity for the cover story, the statement.

Mr. DILLON. Yes.

The CHAIRMAN. It is the second one that went into such detail. It would seem to me that it would be commonsense not to follow up too quickly in the matter of timing. What was the reason for that?

Mr. DILLON. The State Department's second statement was innocuous too. It didn't go into any detail, any more detail than the original cover story did. There was great—if any detail, that was the statement that was put out by NASA.

The CHAIRMAN. Is it not true that the NASA statement itself is what put you in a position of having to make a further statement?

Is that true?

Mr. DILLON. The further statement, I think, was the next statement in this series, was the one that was put out on Saturday which was made only at the time when we knew that the Soviets probably had the pilot, which was new information, and then the Soviets had already said they had him, and had said where he was shot down, and the probability was that they had certain parts of the airplane because the picture which they had first put out turned out to be a fraudulent picture.

BACKGROUND OF DEPARTMENT OF STATE'S STATEMENT OF MAY 7

The CHAIRMAN. Perhaps I don't understand the timing of it.

It seems to me, if I do understand it, that you could have stood upon the cover story for some time before the necessity of any further statement, awaiting developments.

Mr. DILLON. You mean, your question is why we made the statement on Saturday, May 7, which was the first time we departed from the cover story.

The CHAIRMAN. Yes, sir.

Secretary HERTER. That, as I think I have testified before, was a decision that was made in the light of the very full revelation of Mr. Khrushchev in giving out, both as to the pilot's testimony, and as to the parts and equipment that had been recovered. That was when we had to make the decision were we going to keep on lying about this or were we going to tell the truth?

The CHAIRMAN. Why there wasn't a third alternative is what I am trying to get at?

Why didn't you just be quiet and say nothing? You don't have just the alternatives of either continuing to lie or to tell the truth?

You could have said nothing. I was just curious. Was it ever considered that you didn't have to react?

Secretary HERTER. A good many statements were already being made in Congress, a good many statements were already being made or required of us almost.

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The press was hounding everybody, "What do you say now after what Mr. Khrushchev had said," it was a very difficult time in our society, our form of society to have said nothing.

The CHAIRMAN. I believe that was the statement in which you said "it has been established that insofar as the authorities are concerned, there was no authorization for any such flights." Is that correct?

Secretary HERTER. That is right.

The CHAIRMAN. Which was not a truthful statement at that point, was it?

Secretary HERTER. No, this was still partly cover.

The CHAIRMAN. Still partly cover?

Secretary HERTER. Still partly cover. It was not until Monday, after the briefing had taken place before the congressional leadership here on the hill that the full statement was made.

The CHAIRMAN. It was after that statement that the full statement was made?

Secretary HERTER. That is correct.

BACKGROUND OF DEPARTMENT OF STATE STATEMENT OF MAY 9

The CHAIRMAN. That full statement, if I understood it—I think you have testified—was only after complete and thorough consultation with everyone concerned, and had the unanimous support of State and the President; is that correct?

Secretary HERTER. It is, yes.

The CHAIRMAN. Senator Gore, go ahead.

Senator GORE. Well, when you made the final statement that the President did approve, he was responsible—I am not undertaking to quote you exactly—you also made it plain that he did not approve specific flights?

Secretary HERTER. Yes.

[Deleted.]

BLOW TO UNITED STATES' MORAL POSITION

Senator GORE. I will wait until Mr. Dulles' testimony.

Now, I wish to make my own feelings explicit. I have not intended to suggest, nor do I believe the chairman or anyone else has intended to suggest, that the President or any other official of the U.S. Government tells a falsehood. I don't know of any requirement in Anglo-Saxon jurisprudence or any other jurisprudence stemming from Roman law that a citizen is required to incriminate himself. I know of no requirement that a nation is required to incriminate or denigrate or defame itself. I do not claim any sense of morals or sensitivity to moral standards greater than the average American, but I want the record to show that I was humiliated with official falsification, and I think millions of Americans were humiliated. I can agree with you that our alliance stood firm. I am happy that it did, but I think we would be deluding ourselves if we did not realize that this unfortunate incident has dealt a severe blow to the moral position of the United States. I think we should begin to mend it. The way to mend it is to ferret out our errors and our mistakes, correct them, and thereby demonstrate to the world our will and our capacity to survive this kind of blow—and I hope be stronger thereafter.

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WAS PRESUMMIT MEETING SUGGESTED?

The CHAIRMAN. Mr. Secretary, there was one point that I overlooked. I had heard that Chairman Khrushchev had directly or indirectly made some inquiry about the possibility of meeting Mr. Eisenhower before the summit meeting. Do you know whether or not that is so?

Secretary HERTER. No. I know of no such effort.

The CHAIRMAN. No effort?

Secretary HERTER. Actually, Mr. Khrushchev, when he came to Paris, or just before he came to Paris, sent a note to the British and to the French, I think, largely on a procedural matter; no such note to us. When the President arrived in Paris, there was just as much opportunity for Mr. Khrushchev to seek a meeting with him as with the others; and no such effort was made from any Russian source.

MILITARY PREPAREDNESS OF THE SOVIET UNION

The CHAIRMAN. Mr. Secretary, have you drawn any inferences from this whole event relative to the military preparedness of the Soviet Union?

Secretary HERTER. Of course, my judgment would not be as good as that of experts. And here, again, I wouldn't want to give my judgment as a considered judgment from the point of view of the record. There is no question but what the Russians are very active in certain directions, and that the intelligence that has been gained with regard to that activity has been of very great value to us. And I think that is as far as I should go.

The CHAIRMAN. Any further questions?

Senator WILEY. Is the cold war still on or is it over?

Secretary HERTER. It remains to be seen.

Senator WILEY. Then, we had better give primary attention to the main issue, instead of quarreling about who is who and what is what in relation to handling situations. It was your judgment; it isn't my judgment. It isn't the business of every little one in the Senate to tell you what you should do. It is your business, sir.

The CHAIRMAN. Senator Mansfield, do you have any questions?

Senator MANSFIELD. No.

Senator GORE. Off the record, Mr. Chairman.

(Discussion off the record.)

[Deleted.]

LESSON OF THE U–2 INCIDENT

The CHAIRMAN. Mr. Secretary, one last thing. Do you think we have learned—not just we, but all of us, including you and the administration—anything from the U–2 incident?

Secretary HERTER. Not to have accidents.

The CHAIRMAN. Is that all we have learned?

Senator GORE. Not what?

Mr. MACOMBER. Not to have accidents.

The CHAIRMAN. Do you think that is the only lesson we can draw from these events?

Secretary HERTER. Mr. Chairman, I think that anyone would be foolish to say that with hindsight one couldn't have done better than

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when one is faced with certain events at a given time. I think obviously we should be giving serious consideration to the very best method of the handling of anything of this kind that might happen in the future; and I think from that point of view, as the President said, we welcome this inquiry. We welcome a full disclosure as far as we could from the point of view of responsibilities and coordination. I thank you for your patience here today.

The CHAIRMAN. I want to thank you for your patience and your frankness and candor. I think you and your associates—Secretary Dillon and Mr. Bohlen—have been most cooperative in this whole hearing. I like to think that out of this one—as you know, rather pet project of mine—is that the State Department itself be given greater prestige and authority in controlling and coordinating all matters relating to our foreign relations—as I have tried in the case, for example, with the recent instance of control of the black market in Turkey. I think your Department, the Department of State, ought to have more authority than we have in the past accorded it. I am sure that some of our troubles do not relate to any fault on your part, but to the sort of institutional practices that have grown up—and people assuming authority to make statements without consulting you and the Department. I feel at this stage of the proceedings that this may be one of the good things that will come out of these hearings; that the prestige and authority of the State Department will be enhanced.

Secretary HERTER. Thank you.

The CHAIRMAN. Thank you very much.

Senator GORE. Could I join you in commending the Secretary and his assistants for their candor and their patience and their diligence here today.

Secretary HERTER. Thank you.

Senator WILEY. May I also join you the third time by saying, in my humble opinion the evidence and the statement you made and the statement that Dillon made and the President's speech show conclusively that the breakup of the summit conference was due to Khrushchev and no other cause.

The CHAIRMAN. Thank you very much, Mr. Secretary.

The committee is adjourned until next Tuesday.

(Whereupon, at 5:55 p.m., the committee recessed, to reconvene at 10 a.m., Tuesday, May 31, 1960.)

[As noted in the foreword, Allen W. Dulles, Director of the Central Intelligence Agency, appeared before the committee on Tuesday, May 31, at 10 a.m., and testified in executive session. For security reasons, his testimony was not released to the public. The committee recessed on May 31 at 5:10 p.m., to reconvene at 10 a.m., Wednesday, June 1, 1960.]

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EVENTS INCIDENT TO THE SUMMIT CONFERENCE

WEDNESDAY, JUNE 1, 1960

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met at 10:10 a.m., pursuant to recess, Senator J. W. Fulbright (chairman) presiding.

Present: Senators Fulbright (presiding), Mansfield, Gore, Lausche, Wiley, Hickenlooper, Aiken, Carlson, and Capehart.

Also present: Hon. Charles E. Bohlen, Special Assistant to the Secretary of State; Hon. William B. Macomber, Jr., Assistant Secretary of State for Congressional Relations; Richard Helms, Central Intelligence Agency; and Capt. L. P. Gray III, USN, Military Assistant to the Chairman, Joint Chiefs of Staff.

The CHAIRMAN. The committee will come to order.

Our witness this morning is Dr. Hugh Dryden, the Deputy Administrator of the National Aeronautics and Space Administration.

I remind members of our committee that today our transcript will be censored and released to the press. Tomorrow morning at 10 a.m. we will meet again in this room in executive session with Secretary Gates.

Dr. Dryden, do you have a prepared statement?

Mr. DRYDEN. I have no prepared statement but if the committee will, I would like to proceed for 10 minutes or so to give you the background of NASA's research with the U–2 aircraft.

The CHAIRMAN. All right, you may proceed.

STATEMENT OF DR. HUGH L. DRYDEN, DEPUTY ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA); ACCOMPANIED BY JAMES P. GLEASON, ASSISTANT ADMINISTRATOR FOR CONGRESSIONAL RELATIONS, NASA

STUDY OF AIR TURBULENCE BY U–2'S

Mr. DRYDEN. There is an extensive program on air turbulence which was begun by the National Advisory Committee for Aeronautics (NACA). It is a part of—as far as NASA is concerned, it it a part of the aeronautical activities transferred to NASA in accordance with the National Aeronautics and Space Act.

In this program, which began in 1956, there have been 200 weather flights of U–2 aircraft with NASA and air weather service instrumentation covering flights extended over about 264,000 miles. Ninety percent of this flight time was above an altitude of 40,000 feet, and 40 percent of it, or about 100,000 miles, was above 50,000 feet; and these

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flights have been conducted in the Western United States, Western Europe, Turkey, and Japan.

I may recall to your minds that the function of NACA was that of an aeronautical research agency to support the Government's program in the development of civil aircraft and military aircraft.

RESEARCH INFORMATION PRODUCED

We produced only research information used in the design of airplanes.

One important part of this research information which certainly is brought to your mind by some of the recent accidents to aircraft is that of loads on the aircraft due to atmospheric disturbances or gusts. There are two types of problems: one illustrated by the experience of the airplane which recently got caught in thunderstorm activity is that of the maximum load which the airplane may reach which may tear the wings from the body.

The other and more insidious type of loading is the repeated load due to gustiness or rough air that many of you have often encountered in flying. These repeated loads produce a type of brittle failure which we call fatigue failure. This has, as you may recall, been encountered in one or two types of airplanes and remedied at considerable cost.

Now, it has been the function of NACA to carry on a program to furnish the designer information on the magnitude of atmospheric gusts encountered by airplanes, the frequency of occurrence of loads of different magnitudes. We have been engaged in the general type of activity since 1933 and have data on all of the civil transports from that date.

ARRANGEMENTS TO OBTAIN INFORMATION ON AIR TURBULENCE

That, of course, gives you a record of experience with the performance capabilities of present airplanes, but it was our responsibility to try to get this information for airplanes yet to be built. This meant that in practice we were always seeking the highest and fastest airplanes to get information of this kind from, so as to be in advance of the development of the commercial aircraft.

To do this we made arrangements to get information from military airplanes.

For example, at the close of World War II we installed our instruments in the B-36 airplane used then by SAC; and during their training operations these instruments continued to record gusts and the data were sent to us for analysis.

Now the pattern of operation with the commercial airlines and with the military has been the same throughout. We meet with the owners and operators of the airplanes—whether an airline or the military service—come to an agreement with them that our instruments can be installed on their airplanes.

In the early stages we send our instrument technicians to visit and supervise the installation of the instruments. We train employees of the airlines or the GI's in military——

The CHAIRMAN. Dr. Dryden, does any of this have any relevance to the inquiry which this committee is concerned with?

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MR. DRYDEN. It does. We will come to this immediately. We train our technicians to change the film and send the information to NASA for analysis. We have no detailed knowledge of the flight plans until after the fact; and as a matter of record, we obtain information needed to analyze the data. Observations extend throughout the world. At the present time we have instruments on Pan American and TWA jets which, of course, go around the world. We have cooperated with foreign governments and airlines by lending instrumentation.

U–2 OPERATION

Now the U–2 operation is in the same general pattern of operation. This project was organized in 1956 when [deleted] the capabilities of this new airplane were brought to our attention. It was able to fly at altitudes very considerably higher than any existing airplane.

The program has been carried on entirely openly. There have been three reports issued, unclassified; there have been press releases on these operations from time to time.

The program was unclassified except that the data which revealed the airplane could go higher than 55,000 feet were classified. They will now be declassified since the potentialities of the airplane have become known.

[Deleted.]

NEED FOR DATA AT HIGHER ALTITUDES

I must take you back to the atmosphere at the time. These were the days when the airlines had had DC–6's and DC–7's, and Constellations. At that time we knew the 707, the DC–8, and the Electra were under design. We were told that the first of these airplanes would be developed early in 1959. All of our previous data with airplanes had been at altitudes generally not too much above 20,000 feet where these airplanes operated. The new airplanes would operate at 35,000 to 40,000 feet, and the military services were interested in supersonic airplanes which traveled at much higher altitudes, so that there was at this time a great pressure on us to find methods of obtaining data, and the presence of the capabilities of the U–2 airplane seemed to us to give the answer. Some of our advisory committees at the time were bringing to our attention the great need for this information. I will simply read one extract, if I can find it quickly for you, and this committee called our attention to the fact that we did not have suitable airplanes available.

There are three basic regions within which data are available, below 25,000 feet, up to 30,000 feet with military vehicles, up to 55,000 where meager data are available from balloons and rockets and inference from meteor trails. Existing research vehicles are reaching to higher altitudes—

and so on.

It is recommended that emphasis be placed on obtaining quantitative information on air turbulence at the highest altitudes reasonably obtainable with existing research vehicles.

[Deleted.]

Now this program was carried on from 1956 through the present time. NASA was established in October, October 1, 1958, and this was one of the programs carried over into NASA.

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I might recall to you that NACA was not extensively involved in aeronautical activities, that NASA, at present, is engaged in international space activities. So far we have not had any adverse reactions on the part of people with whom we are cooperating abroad in space programs.

I think this gives the general background and I would be glad to respond to questions or to continue with the NASA chronology of the week of May 1, as you desire, Mr. Chairman.

The CHAIRMAN. Perhaps we ought to proceed with questions. [Deleted.]

LINE OF RESPONSIBILITY FROM NASA TO THE PRESIDENT

Do you report directly to the President? What is your relationship to the rest of the Government?

Mr. DRYDEN. At that time the NACA was managed by a committee of 17 persons appointed by the President who did report directly to him.

I was the chief executive officer reporting to the committee at the time this project was started.

The CHAIRMAN. In 1956?

Mr. DRYDEN. 1956.

The CHAIRMAN. At that time the agency was known as the NACA?

Mr. DRYDEN. That is correct.

The CHAIRMAN. When did it change its name to NASA?

Mr. DRYDEN. On October 1, 1958, it not only changed its name but was collected with other parts of the Government into a completely new agency, the NASA.

The CHAIRMAN. Does it report to the President?

Mr. DRYDEN. It reports directly to the President, sir.

The CHAIRMAN. There is a committee of 17 you say?

Mr. DRYDEN. There is not a committee in NASA. There is an Administrator and Deputy Administrator appointed by the President with the advice and consent of the Senate.

The CHAIRMAN. Is there anyone on the staff of the White House who is given the duty of receiving your reports?

Mr. DRYDEN. Doctor Glennan reports and talks very frequently with the President himself. He does keep the Science Adviser fully informed of our activities in space.

The CHAIRMAN. Who is the Science Adviser?

Mr. DRYDEN. Dr. Kistiakowsky.

The CHAIRMAN. So if anyone has the direct responsibility within the White House, the office of the Presidency, it is Dr.——

Mr. DRYDEN. Kistiakowsky. He is the President's adviser on science and technology. He has no line responsibility. He is an adviser to the President.

REPORT OF U–2'S LOSS

The CHAIRMAN. The first that you knew of this was the loss of the U–2 plane on May 1?

Mr. DRYDEN. May 1 it was reported to the Administrator and myself that a U–2 had been lost, without further detail.

[Deleted.]

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ANTICIPATION OF INQUIRIES ABOUT LOSS

The CHAIRMAN. Did CIA consult with you as to the precise language of the release of May 5?

Mr. DRYDEN. What was——

The CHAIRMAN. Who drew up that language?

Mr. DRYDEN. It was discussed in consultation. The questions the press asked were: who is the pilot, where was the airplane going, what information do you have about it?

So that between CIA and ourselves, a list of these questions which we had received was recorded, and the general nature of the answers to these questions decided upon. Now, let me tell you about the so-called release of the statement. On the morning of Thursday, May 5, was Khrushchev's announcement that the plane was shot down. Somewhere between 11 and 12 o'clock, I believe, the President directed an inquiry and public report on the missing plane, and as reported in the Herald Tribune—I do not have any other stenographic record—in quotes, it says:

> At the White House, Mr. Hagerty announced at the direction of the President a complete inquiry is being made. The results of these inquiries, the facts as developed will be made public by the National Aeronautics and Space Administration and the Department of State.

BACKGROUND OF THE MAY 5 NASA RELEASE

The reporters who had listened to Mr. Hagerty, many of them, came immediately to our public information office to obtain further information. We ourselves thought it was better to take the agreed-upon answers to the questions, to write them into a statement, and give it to them all at once, rather than engage in a general free-for-all on this subject. I would like to emphasize that the text of that statement as issued was not cleared with CIA or anyone else, although the information in it, the answers to the questions that are contained within it, were cleared with CIA, and I am told by them with State.

The CHAIRMAN. You discussed all of the substantive facts and statements in that with representatives of the CIA?

Mr. DRYDEN. This is correct. It was not intended to give out a statement. We were confronted with a large group of reporters who wanted the facts. We could either engage in a general free-for-all discussion—we thought it preferable to take these facts, put them in a piece of paper and give it to all of them at once.

CLEARANCE OF MAY 5 STATEMENT

The CHAIRMAN. After consulting with CIA, you prepared this statement, and they knew what the statement was?

Mr. DRYDEN. I tried to say before that the statement itself or the facts that were collected in a statement was not cleared with anyone.

The CHAIRMAN. With anyone?

Mr. DRYDEN. With anyone but ourselves. The substance of it had been cleared. The fact that it was written down in a statement on a piece of paper was not cleared with anyone.

The CHAIRMAN. Before you issued this to the press, did you have anyone from the Department of State look at it and approve it?

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Mr. DRYDEN. We had no contact with the Department of State. Our direct contacts were solely with the CIA.

The CHAIRMAN. Has no one ever advised you that the Department of State should be consulted when statements affecting our foreign policy are made?

Mr. DRYDEN. I was told that these statements had been cleared by CIA with State. I did not independently check that fact.

The CHAIRMAN. Who told you that?

Mr. DRYDEN. The CIA people with whom we were dealing, sir.

REASON FOR MENTIONING OTHER U–2 BASES IN MAY 5 RELEASE

The CHAIRMAN. What was the reason for saying in your statement that these planes were being used in Japan and Turkey and California. Why were you so specific about Japan and California?

Mr. DRYDEN. We were asked by the press, "How many U–2 planes does NASA have in its weather program? Where are they operating?" Now, much of this had been published in these documents to which I referred which had been publicly released. To take a specific one, one released just a few months ago in June 1959, this has been released generally, you will find in this that these operations——

The CHAIRMAN. I don't wish you to read that memorandum. I only want to know your thinking. You issued this without checking it with the State Department. Why did you state that they were operating out of Turkey?

Mr. DRYDEN. This published report——

The CHAIRMAN. You had already published it?

Mr. DRYDEN (continuing). Had said, "These flights were made from bases at Watertown Strip, Nevada."

The CHAIRMAN. I know, but those were weather flights.

[Deleted.]

Mr. DRYDEN. We had mentioned Adana, Turkey, and Atsugi, Japan, in this free and open publication.

The CHAIRMAN. Senator Mansfield?

GROUNDING OF U–2'S

Senator MANSFIELD. Dr. Dryden, have all our U–2's been recalled since the President's order of Thursday, a week ago, that there would be no further overflights of the Soviet Union?

Mr. DRYDEN. Not to my knowledge, sir. I believe at the present time the airplanes are grounded. But I think this is a question again that the operating people will have to answer.

INCIDENT IN JAPAN

Senator MANSFIELD. Do you recall the incident which occurred in Japan some months ago when a U–2, I assume, landed at Atsugi and GI's landed from a helicopter and ordered the Japanese civilians in the area to leave?

Mr. DRYDEN. I remember the newspaper accounts of it. I have no personal knowledge of the incident.

[Deleted.]

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We made arrangements to put instruments in U–2 airplanes. There comes back to us flight plans of weather flights, and our instrumentation and the data from those instruments, and I do not have in advance knowledge even of the weather flight operations——

Senator MANSFIELD. I am referring to a story which appeared in Time magazine 2 or 3 weeks ago. I was seeking collaboration of that story. But you have no personal knowledge whether it was true or false?

Mr. DRYDEN. I have no personal knowledge of it, sir.

Senator MANSFIELD. Your responsibility in these U–2 flights is primarily observation and calculation concerning weather conditions?

Mr. DRYDEN. That is correct, and in those flights made with U–2's with our instruments, for our purposes.

CHAIN OF COMMAND TO THE WHITE HOUSE

Senator MANSFIELD. What is Dr. Glennan's position? You are the Administrator of NASA.

Mr. DRYDEN. I am the Deputy Administrator. I appear because I was here in 1956 through this program, from the beginning.

Senator MANSFIELD. Dr. Glennan is the Administrator?

Mr. DRYDEN. He is the Administrator.

Senator MANSFIELD. And Dr. Glennan supposedly reports directly to the President?

Mr. DRYDEN. To the President, yes, sir.

Senator MANSFIELD. Does he or does he not report directly to Dr. Kistiakowsky?

Mr. DRYDEN. The President on the average sees him two or three times a month.

Senator MANSFIELD. Where does Dr. Kistiakowsky——

Mr. DRYDEN. He is a member of the White House staff.

Senator MANSFIELD. I know that he is the President's scientific adviser.

Mr. DRYDEN. He is not in the line of command.

Senator MANSFIELD. The chain of command is directly from Dr. Glennan to the President?

Mr. DRYDEN. Yes, sir.

Senator MANSFIELD. That is all.

The CHAIRMAN. Senator Wiley?

DATE OF COVER STORY

Senator WILEY. What was the date of that cover statement?

Mr. DRYDEN. The Turkish story was put out by the local commander in Istanbul on Tuesday, May 3. The statement which we issued recording the agreed-upon answers to questions was on Thursday, May 5. If I might just continue this, on Friday, May 6, a NASA U–2 airplane was flown at Edwards Air Force Base, exhibited to the press, they saw the instruments that were used. They took movies of the airplane. On Saturday, May 7, Mr. Khrushchev reported that he had the pilot. At 6 p.m. State issued a statement admitting the reconnaissance flight.

At 6:30 NASA directed all further inquiries to the State Department.

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Senator WILEY. Let's get back to my question. What was the date of the cover statement that the chairman has been talking about?

Mr. DRYDEN. The 5th, as I understand it, sir.

[Deleted.]

Senator WILEY. NASA is primarily engaged in seeking weather information.

Mr. DRYDEN. We have no intelligence activities either in the development of devices, methods, instruments or operations.

CLEARANCE OF MAY 5 STATEMENT

Senator WILEY. My understanding is that this cover statement was the result of previous interrogation by the press.

Mr. DRYDEN. That is correct.

Senator WILEY. When you issued it, you did not consult with Central Intelligence?

Mr. DRYDEN. Not on the statement itself but all of the questions had been taken up with them. We had no source of information. We asked how shall we reply to the name of the pilot, to the flight plan of the airplane, and the answers as given us are incorporated in the statement, although the exact text was not read back to CIA.

PUBLIC RELEASES ON U–2 WEATHER FLIGHTS

Senator WILEY. You referred to some publicity that was issued, I think you said, in 1959.

Mr. DRYDEN. Well, the first press release on our U–2 project was released on May 7, 1956.

Senator WILEY. You held up a blue docket referring to 1959.

Mr. DRYDEN. Yes, this is some of the results.

Senator WILEY. Has that been made public?

Mr. DRYDEN. Yes.

Senator WILEY. On what pages is the part you referred to, because I want it in the record. I want to try to get this story simple and clear.

Mr. DRYDEN. On page 3 of this NASA memorandum which carries a number, 4–17–59L, the flights were made from bases at Watertown Trip, Nev., Lakenheath, England, Wiesbaden, Germany, Adana, Turkey and at Atsugi, Japan. Two additional flights were made from a base in Alaska and these data have been combined with those from Japan in the statistical treatment.

Senator WILEY. Yes. You agree that that has been public information now for some time?

Mr. DRYDEN. Yes.

Senator WILEY. Since 1959?

Mr. DRYDEN. And even earlier, I think in 1957—57, one of them deals with the western part of the United States only, and I believe that 1959 is the one which gives the list, yes, sir.

June of 1959.

[Deleted.]

Senator WILEY. That is all.

The CHAIRMAN. Senator Gore?

[Deleted.]

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REASON FOR NASA STATEMENT

Senator GORE. In response to a question by me, Secretary Dillon testified as follows:

> No, it was decided when we first heard of this, this news, as I said earlier this morning, at this National Security Council meeting or right after it that was held outside of Washington, that the State Department would handle the publicity on this, and that we would make any statement that would be made, and it was known at that time that we would make a statement.

That leads me to wonder why NASA was making a statement at all.

Mr. DRYDEN. This information, this decision of which you speak was not transmitted to us. I would like to remind you that this is all within a few hours. The information we had was a statement made at the White House which I read to you that the reporters were referred to NASA and the State Department for the facts and this was the extent of my knowledge when the statement was issued.

NASA UNAWARE OF DECISION TO LET STATE DEPARTMENT HANDLE PUBLICITY

Senator GORE. Then you did not know that a high level decision had been made that the State Department would make whatever statement was made with respect to this.

Mr. DRYDEN. That is correct. Within the 3 hours or so of this interval, this was not passed to us, and I would again say that so far as we were concerned the cover story was in effect as the result of the collaboration with CIA for the period from May 1 to May 7, and we did nothing, we said nothing contrary to the agreed on facts relating to the cover story.

Senator GORE. When did you first learn of this high level decision that the State Department would make whatever statement was made and would handle the publicity on this matter?

Mr. DRYDEN. I think that after the statement was issued, there were some calls as to—I do not know how to place the time. The only thing I have been able to find in our records is an instruction to our people as of Saturday to refer all inquiries to the State Department. I believe that before that time, there had been some discussions of why the statement had been issued by us, and I have explained the reasons for that.

Senator GORE. I will get to that in a moment. When did you first know that the decision had been made, to which Mr. Dillon referred, that the State Department would make statements and would handle the publicity on this matter? You say you were not informed that the decision had been made at the time you made your statement.

Mr. DRYDEN. It was subsequent to the day of May 5, May 6, or May 7. I have a record of May 7. After the State Department's statement at 6 p.m., that NASA would refer all inquiries to the State Department, I believe we were informed, probably on Friday the 6th, but I have no specific record.

Senator GORE. Who informed you?

Mr. DRYDEN. I think it was a telephone call. I just do not have a specific recollection whether it came as a telephone call or a contact with Dr. Glennan at lunch at the White House. I just do not recall, sir.

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We can perhaps clear that up for the record after consultation, sir.

Senator GORE. I think it would be well if you can do so.

(The following information was subsequently furnished:)

STATEMENT BY DR. DRYDEN ON WHEN NASA WAS NOTIFIED OF DECISION TO HAVE DEPARTMENT OF STATE HANDLE PUBLICITY ON U-2

The telephone logs of Dr. Glennan and myself show no calls to or from the State Department on May 6 or 7, but it is my best recollection that we did learn of the decision on May 6.

QUESTIONS AND ANSWERS PREPARED TO HANDLE INQUIRIES

You have referred several times to questions and answers, or the answers to questions as the case may be, supplied to you by CIA. Do you have a copy of that question and answer series?

Mr. DRYDEN. We may have some rough notation. What we did was record the types of questions that the press was asking us. We then took these types of questions to the CIA and discussed them with them as to the answers.

[Deleted.]

Senator GORE. Was there not a typewritten copy?

Mr. DRYDEN. To the best of my knowledge, no.

Senator GORE. But you do have some notes.

Mr. DRYDEN. The statement itself enables you to reconstruct the questions. They are generally who was the pilot, what was the flight plan, where was the airplane supposed to go, what was the route, how many airplanes does NASA operate on weather missions, from what bases have these airplanes been operating? I think you can reconstruct the questions from the statement itself. I am not sure whether we can find the notes that someone may have written down to refresh his memory in discussing it.

INSTRUCTIONS TO NASA TO MAKE STATEMENT

Senator GORE. Who instructed your Agency to make a statement?

Mr. DRYDEN. We were instructed to answer questions.

Senator GORE. By whom?

Mr. DRYDEN. By the CIA, who said that this had been coordinated with the State Department.

Senator GORE. And the CIA gave you instructions to respond to questions?

Mr. DRYDEN. We asked for information. The operation was not ours. We had no knowledge of the operation itself. We said, "How shall we reply to these questions? You realize the fact that we did not know very much about where this airplane was, whether the Russians have the airplane, whether they have the pilot. What do you want us to say in this interim period? Can we find out more about it?"

Senator GORE. You felt the burden of saying something, did you?

Mr. DRYDEN. We felt the burden of answering questions because for 4 years the existence of this NASA weather flight program had been known.

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WHEN WERE COUNTERMANDING INSTRUCTIONS RECEIVED?

Senator GORE. And, meanwhile, no one informed you that the decision had been made at the highest levels of Government that the State Department would handle this?

Mr. DRYDEN. The discussions I referred to, the visits of the press, were made within an hour or two of the making of that decision at a place outside of Washington, and it was not communicated to us within that 2-hour period.

Senator GORE. You have told us it wasn't communicated to you at all.

Mr. DRYDEN. Until the following day.

Senator GORE. Until after you had made a statement?

Mr. DRYDEN. A statement. To get the chronology again, this meeting to which you refer, at which the decision was made, was on the morning of May 5, somewhere between 11 and 12 o'clock. A decision was made and Mr. Hagerty informed the press at the direction of the President that the facts would be obtained through NASA and State. The reporters came immediately over to our public information section wanting to know some of these facts.

Senator GORE. Do you know whether either Mr. Hagerty or President Eisenhower had been informed of this decision reached outside Washington?

Mr. DRYDEN. I think the President was outside Washington at the time.

Senator GORE. It seems to me that I recall the President participated in this conference.

Mr. DRYDEN. I just do not know the details of that. I think it was given in the testimony of the Secretary of State.

Senator GORE. Wasn't that a meeting of the National Security Council?

Mr. DRYDEN. I do not know that, to my knowledge. The statement was made that Mr. Eisenhower was at secret Civil Defense Headquarters.

Senator GORE. Will you repeat that?

Mr. DRYDEN. I say the statement says that President Eisenhower was at his secret Civil Defense Headquarters.

REFERENCE TO MR. DILLON'S TESTIMONY REGARDING NASA'S ROLE

Senator GORE. I will read from Mr. Dillon's statement:

Now, Mr. Hagerty was not at the Security Council meeting, but he was at that area out there where this exercise was taking place and so he was aware of the fact that the State Department would be making a statement at noon that day at our regular press conference time. Actually, the statement was delayed 45 minutes. It was made at 12:45 when our regular daily press conference took place.

Senator GORE. Was it decided there that NASA would make a statement also?

Mr. DILLON. It was not, to my knowledge, no. It was not decided there that NASA would make a statement.

Senator GORE. Who made that decision?

Mr. DILLON. I think that you have to ask NASA. I don't know who made any such decision.

So you say you decided upon instructions of CIA?

Mr. DRYDEN. No.

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Senator GORE. Just how do you state it?

Mr. DRYDEN. I stated that we had received word of the White House announcement that the facts will be made public by NASA and the Department of State. Now, this means I suppose that within this 2- or 3-hour period this information was not transmitted to us. I do not know the reasons.

Senator GORE. Do you know if Mr. Hagerty called you or Mr. Bonney or anyone in the Department suggesting that a statement be made?

Mr. DRYDEN. Not to my knowledge, sir.

Senator GORE. My time is up.

The CHAIRMAN. Yes. Senator Hickenlooper?

NASA ACTION BASED ON PREVIOUS UNDERSTANDING WITH CIA

Senator HICKENLOOPER. Dr. Dryden, when the newsmen came to the Information Department of NASA, did the Information Department act on its own?

Mr. DRYDEN. No, they did not. They acted in consultation.

Senator HICKENLOOPER. With you?

Mr. DRYDEN. With me; yes, sir.

Senator HICKENLOOPER. Was it in connection with that consultation, based upon the information which you then had about Mr. Hagerty's statement, that you authorized the issuance of the statement by the Information Service of NASA?

Mr. DRYDEN. It was called a memorandum to the press. I did not attribute sufficient importance to the distinction between answering questions of reporters and giving them the same information on a piece of paper.

Senator HICKENLOOPER. After you had made the statement, or your Information Department issued this statement, was this statement sent to the CIA or the State Department?

Mr. DRYDEN. It was sent—I do not know exactly what time.

Senator HICKENLOOPER. And was the statement which was issued by your Information Department—perhaps you have answered this question—cleared with CIA in its context or with the State Department prior to the issuance by your Information Service?

Mr. DRYDEN. I have answered that. The statement, as written, was not cleared.

The information in the statement had been previously cleared by CIA, with State.

Senator HICKENLOOPER. So that the statement was based, then, upon the understandings which had previously been had?

Mr. DRYDEN. This is correct.

Senator HICKENLOOPER. With CIA?

Mr. DRYDEN. This is correct.

Senator HICKENLOOPER. And with the State Department?

Mr. DRYDEN. Nothing—no substantive information was added to it.

Senator HICKENLOOPER. Just to get this cleared up a little bit, after you learned of the statement of Mr. Hagerty—which I believe was the source of your determination to make the May 5 statement—after you had learned of that statement of Mr. Hagerty that NASA and the State Department could give information on this matter, did you

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get in touch with the White House, Mr. Hagerty, or any authoritative person there, or with the State Department?

Mr. DRYDEN. I did not. I say I perhaps erroneously did not see the difference between answering questions of a large number of reporters and putting the same thing down on a piece of paper. It is the same information.

Senator HICKENLOOPER. I believe that is all, Mr. Chairman.

The CHAIRMAN. Senator Lausche?

Senator HICKENLOOPER. I wanted to ask you for a copy of that statement.

Mr. DRYDEN. The committee has it already.

Senator HICKENLOOPER. I understand it is in the background documents. That is all right.

The CHAIRMAN. It is in the background documents.

(See appendix 1, p. 180.)

NO WRITTEN MEMORANDUM OF QUESTIONS AND ANSWERS

Senator GORE. Also, I believe you were going to supply to the chairman the question and answer series.

Mr. DRYDEN. I was going to see if there is around, a penciled memorandum of the questions. I am not sure that there is.

Senator GORE. If there is?

Mr. DRYDEN. If there is, I will supply it to the chairman.

(The following information was subsequently furnished:)

No memorandum of questions and answers was made; the discussion was entirely oral.

NASA'S LACK OF KNOWLEDGE OF U–2 FLIGHT

The CHAIRMAN. Senator Lausche, the NASA statement is found on page 4 of the background documents.

[Deleted.]

Senator LAUSCHE. At the time you issued your statement you did not have knowledge of what the Soviet knew about it and what actually happened?

Mr. DRYDEN. We did not.

Senator LAUSCHE. Did you have knowledge of the instructions that were given to the pilot?

Mr. DRYDEN. No, sir. No knowledge about the operations.

Senator LAUSCHE. And that is——

Mr. DRYDEN. We heard Khrushchev's press announcement, of course, that morning.

Senator LAUSCHE. I think that is all that I have with this witness.

The CHAIRMAN. You think that your position as an international weather gatherer has been compromised by this U–2 incident?

Mr. DRYDEN. Not so far. [Deleted.]

(From this point on all further testimony on this date was classified by order of the committee.)

(At 12:15 p.m., the committee adjourned, to reconvene at 10 o'clock a.m., June 2, 1960.)

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EVENTS INCIDENT TO THE SUMMIT CONFERENCE

THURSDAY, JUNE 2, 1960

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met at 10:10 a.m., pursuant to recess, Senator J. W. Fulbright (chairman) presiding.

Present: Senators Fulbright, Humphrey, Mansfield, Morse, Long, Gore, Wiley, Hickenlooper, Aiken, Capehart, and Carlson.

Also present: Brig. Gen. George S. Brown, U.S. Air Force, and Capt. Means Johnston, Jr., U.S. Navy, military assistants to the Secretary of Defense; Capt. L. P. Gray III, U.S. Navy, military assistant to the Chairman, Joint Chiefs of Staff: Hon. Charles E. Bohlen, Special Assistant to the Secretary of State; Hon. William B. Macomber, Jr., Assistant Secretary of State for Congressional Relations; Richard Helms, Central Intelligence Agency.

CHAIRMAN'S OPENING STATEMENT

The CHAIRMAN. The committee will come to order.

We have this morning the Honorable Thomas S. Gates, Jr., the Secretary of Defense.

Mr. Secretary, I think you know about the regulations. Your testimony will be taken down but nothing will be released except that which has been passed by the censors representing the State Department and the CIA, and I assume perhaps you may want to consult with them.

I think you understand that.

Secretary GATES. Yes, sir.

The CHAIRMAN. I understand you have a statement.

Secretary GATES. A very brief statement.

The CHAIRMAN. All right, Mr. Secretary, you may proceed.

STATEMENT OF THE HONORABLE THOMAS S. GATES, JR., SECRETARY OF DEFENSE

Secretary GATES. Mr. Chairman, I appreciate this opportunity to appear before you.

I have a short statement, if I may read it. It relates to two subjects. First, I am certain that you wish me to cover the role played by the Department of Defense in the U-2 overflight program.

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ROLE OF THE DEPARTMENT OF DEFENSE IN THE OVERFLIGHT PROGRAM

Elements of the Department of Defense gave technical advice to the U-2 project. No military aircraft were used for these flights nor were the pilots military personnel.

From time to time, the Director of the CIA, after obtaining the concurrence of the Secretary of Defense and the Secretary of State, recommended a series of programs to the President.

More specifically, I reviewed program proposals embracing several priority missions, one or more of which it was proposed to execute in the near future. Responsibility for the operational conduct of the program rested with the CIA.

We obviously were interested in the results of these flights as we are in all of our Nation's intelligence collection results.

FLIGHTS GAVE VITAL INFORMATION

For example, from these flights we got information on airfields, aircraft, missiles, missile testing and training, special weapons storage, submarine production, atomic production and aircraft deployments, and things like these.

These were all types of vital information. These results were considered in formulating our military programs. We obviously were the prime customer, and ours is the major interest.

TEST OF MILITARY COMMUNICATIONS

Secondly, on a separate subject:

One incident, and one over which I assume full responsibility, is the calling of a test of the readiness of our military communications from Paris. In view of the fact that my action in this matter has been subject to some speculation, I would like to give you the facts.

First of all, our military forces are always on some degree of alert. So it is merely a matter of moving this degree or condition of alert up or down the scale. On Sunday night, May 15, we were already aware of the sense of the statement which Mr. Khrushchev was going to make the following morning. The conditions which he had set for his participation in the conference made it apparent even at the time that he deliberately intended to wreck the conference.

This communications alert was not an act that was either offensive or defensive in character. It was a sound precautionary measure. It did not recall Army, Navy, Air Force, and Marine personnel from leave. There was no movement of forces involved. However, I want to emphasize that it did make certain that, if subsequent developments made necessary a higher state of readiness, such action could be taken promptly and convincingly.

Under the circumstances it seemed most prudent to me to increase the awareness of our unified commanders. Moreover, since the command and individuals concerned in the decision process, including the President, the Secretary of State, and myself, were overseas, it was important to check out our military communications. At about midnight, Paris time, Sunday night, I requested that a quiet increase in command readiness, particularly with respect to communications, be instituted without public notice, if possible.

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One phase of our testing is to call no-notice exercises of our command communications. While some commands went further in executing the instructions issued by the JCS as a result of my message than I had anticipated, I consider the order proper and absolutely essential. In similar circumstances I would take exactly the same action.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Secretary.

PRESUMMIT DISCUSSION REGARDING SUSPENSION OF FLIGHTS

Mr. Secretary, did you or any of your aides participate in any conference prior to May 1 regarding the U–2 flights?

Secretary GATES. Yes, Mr. Chairman. I was some weeks before May 1 briefed on the preliminary results of the April 9 flight. At that time, I was informed of a program of possible flights, one of which would be selected to be flown, and I gave my approval of that program.

The CHAIRMAN. Was anything said at that time about a moratorium in view of the summit conference?

Secretary GATES. No, sir.

The CHAIRMAN. Who participated in that conference?

Secretary GATES. That conference was in my office in the Pentagon, and was between myself and a man from CIA.

The CHAIRMAN. Was anyone in the State Department present?

Secretary GATES. No, sir.

The CHAIRMAN. Do you know whether the State Department was advised specifically of the plans for the May 1 flight?

Secretary GATES. I don't know from my own knowledge, but I am perfectly certain that the Secretary of State was advised of the program as I was.

The CHAIRMAN. You didn't advise him nor was he represented at that meeting?

Secretary GATES. No, sir.

The CHAIRMAN. And no one raised the question of whether or not there should be a suspension?

Secretary GATES. No, sir. In this conversation, it was a private conversation between the CIA representative and myself, and I was asked for my advice or approval of the program and I gave it.

The CHAIRMAN. I understand that, but I merely meant that the question of whether or not there should be a suspension in view of the upcoming summit was not raised; is that correct?

Secretary GATES. Not raised between the two of us, no, sir.

The CHAIRMAN. Was it raised at any time?

Secretary GATES. I didn't have any other discussions about the flight with anyone, Senator Fulbright.

The CHAIRMAN. Then so far as you know, it was not raised?

Secretary GATES. Yes, sir.

QUESTION OF ANY PRIOR SUSPENSION OF FLIGHTS

The CHAIRMAN. To your knowledge, were any flights prior thereto ever suspended because of political meetings, that is, other than weather or military considerations?

Secretary GATES. I have no knowledge of any suspension of any flights for those purposes.

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The CHAIRMAN. There was no suspension to your knowledge when the Camp David meeting took place?

Secretary GATES. No, sir.

The CHAIRMAN. Nor was there any suspension, so far as you know, during the period in which Khrushchev visited the United States?

Secretary GATES. I don't know of any suspension. I don't know precisely whether during that period we flew any flights, Mr. Chairman.

The CHAIRMAN. No, but I mean you didn't discuss the question?

Secretary GATES. I didn't discuss the question of suspension of flights, no, sir.

The CHAIRMAN. Since you never considered it, then you had no position relative to the continuation, did you?

Secretary GATES. I approved this program, so I took a position affirmatively.

SIGNIFICANCE TO DEFENSE DEPARTMENT OF SUSPENSION OF FLIGHTS

The CHAIRMAN. Were the results of these flights important to the Defense Department?

Secretary GATES. The results were very important to the Defense Department.

The CHAIRMAN. Very useful to you?

Secretary GATES. Yes, sir.

The CHAIRMAN. Do you regard it as an important loss that the flights have now been suspended?

Secretary GATES. I think that, through becoming compromised, we have lost an important source of intelligence. It has been a very successful program over the past.

The CHAIRMAN. Then it is a great loss from your point of view not to have available any further flights; is that correct?

Secretary GATES. I think if we had been able to continue them without having been caught and therefore compromised the source, it would have been most useful.

RUSSIAN KNOWLEDGE OF THE FLIGHTS

The CHAIRMAN. Mr. Gates, did Khrushchev, or the Russians, know of overflights prior to May 1?

Secretary GATES. He says he did.

The CHAIRMAN. Well, what do you think?

Secretary GATES. I believe that he did, Mr. Chairman, but I don't believe anyone could specifically prove it. But I believe that he did. I believe he told the truth.

The CHAIRMAN. If he knew about it, why did the incidents of May 1 compromise the flights; why should they be discontinued?

Secretary GATES. Well, I don't believe he knew the exact type and character of the flights. He probably—all he knew was that they were [deleted] aircraft high in his sky.

KNOWLEDGE OF PRESIDENT AND SECRETARY OF STATE RE ORDER FOR ALERT

The CHAIRMAN. On your order on May 15, your alert, did you consult the Department of State before ordering it?

Secretary GATES. No. I advised the Secretary of State, who was with the President when it was issued.

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The CHAIRMAN. Did you advise him before you issued it?
Secretary GATES. He was advised before it was released yes, sir.
The CHAIRMAN. Was his opinion asked or was he merely advised of it?
Secretary GATES. Well, I told him that I was about to issue a communications alert, and the communication readiness exercise.
The CHAIRMAN. He approved of it.
Secretary GATES. He did not register any disapproval.
The CHAIRMAN. Well then he approved it.
Secretary GATES. I think so, yes, sir.
The CHAIRMAN. Was that Mr. Herter?
Secretary GATES. Yes, sir.
The CHAIRMAN. In Paris.
Secretary GATES. Yes, sir.
The CHAIRMAN. Did you advise the President?
Secretary GATES. Yes, sir.
The CHAIRMAN. Before it was made?
Secretary GATES. Yes, sir.
The CHAIRMAN. Was the NSC consulted about the alert?
Secretary GATES. No, sir.

MEETING OF MAY 9

The CHAIRMAN. Mr. Gates, did you participate in any meeting on May 7 to consider the statement which was later issued by the Secretary of State?
Secretary GATES. No, sir.
The CHAIRMAN. Or on May 9?
Secretary GATES. Yes, sir.
On May 9, that is Monday, I believe, I participated in a meeting in the office of the Secretary of State.
On the morning of the 9th.
The CHAIRMAN. Did you approve of the statement made in which the full revelation was made?
Secretary GATES. I approved of the statement that was made on May 9, yes, sir.
The CHAIRMAN. Who was present at that meeting?
Secretary GATES. Well, I know that Mr. Douglas and myself were present from the Department of Defense. Mr. Herter and Mr. Douglas Dillon, and Mr. Kohler were present, I think Mr. Bohlen was present from the State Department, there may have been one or two others.
The CHAIRMAN. Did that meeting go on for some time?
Secretary GATES. I would say about an hour.
The CHAIRMAN. About an hour.
Secretary GATES. Yes, sir.

PRESIDENTIAL RESPONSIBILITY DISCUSSED

The CHAIRMAN. Was the question of whether or not it was wise for the President to take responsibility discussed at that meeting?
Secretary GATES. Yes, sir.
The CHAIRMAN. What was your position?
Secretary GATES. My position was that he should take responsibility.

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The CHAIRMAN. Was the meeting unanimous?
Secretary GATES. I believe it was.
The CHAIRMAN. They all agreed?
Secretary GATES. Yes, sir.
The CHAIRMAN. It went on about an hour.
Secretary GATES. Well, I would say at least an hour, Senator.
The CHAIRMAN. Well, did it go on more than an hour?
Secretary GATES. Well, I am talking about my recollection. I would think it was at least 1 hour. Perhaps it was longer.

STATEMENT BY NASA

The CHAIRMAN. Was the statement issued by NASA on May 5 cleared with your office?
Secretary GATES. No, sir.
The CHAIRMAN. You didn't know anything about it.
Secretary GATES. No, sir.
The CHAIRMAN. Have you had any relations with NASA?
Secretary GATES. No, sir, not in this connection.
The CHAIRMAN. I mean in connection with the U-2 flight.
Secretary GATES. No, sir.
The CHAIRMAN. Were these U-2 flights under your direct control in the field, that is, under the Air Force direct control in the field?
Secretary GATES. No, sir, they were under the control of the CIA. [Deleted.]

INITIAL STATEMENT BY AIR FORCE IN TURKEY

The CHAIRMAN. How did it happen the Air Force made the initial statement of the missing plane?
Secretary GATES. That was a part of the cover story that was decided upon and they issued this statement from the base in Turkey about a plane being missing.
The CHAIRMAN. Well, does that indicate that you had arrived ahead of time in concert with the CIA upon proper procedure to be followed in case of a mishap?
Secretary GATES. I was not familiar with the details of how a cover story would be executed. I was aware of the fact that a cover story existed, and I imagine that when the details of it were put into operation, the Central Intelligence Agency went to work.
The CHAIRMAN. It was not your responsibility to supervise the cover story?
Secretary GATES. No, sir.
The CHAIRMAN. My time is up. Senator Gore?

MEETING OF THE NATIONAL SECURITY COUNCIL, MAY 5

Senator GORE. Mr. Secretary, you are a member of the National Security Council.
Secretary GATES. That is right, Senator.
Senator GORE. Did you attend the meeting of the Council held on May 5?
Secretary GATES. Yes, sir.
Senator GORE. Did the President participate in that conference?
Secretary GATES. At the meeting of the NSC?
Senator GORE. Yes.
Secretary GATES. Yes, sir.

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Senator GORE. Was the cover story discussed there?

Secretary GATES. No [deleted], Senator.

There was a meeting of the small group after the NSC meeting——

Senator GORE. Did you participate?

Secretary GATES. Where we discussed the Khrushchev statement. I participated with the President. It was not at the NSC meeting.

Senator GORE. At this conference in which Mr. Khrushchev's speech was discussed, was the cover story discussed?

STATE DEPARTMENT TO HANDLE RELEASES ON SUBJECT

Secretary GATES. Well, I think it was discussed in a general manner but not in detail. It was decided at that meeting that the responsibility for all releases pertaining to this matter would be handled by the Department of State.

Senator GORE. Was there any discussion at this meeting of the advisability of telling the truth?

Secretary GATES. I think I made a statement in that meeting, something to the effect that the prestige of the Presidency should not be involved in an international lie particularly when it would not stand up with respect to the facts. But that was the extent of the discussion. There was no decision.

STATE DEPARTMENT'S COVER STORY

Senator GORE. After this observation on your part, the State Department did issue a statement that was not true; is that the case?

Secretary GATES. I think——

Senator GORE. Well, the record shows——

Secretary GATES. I think they issued a statement, that is right. I think they issued a part of the cover story statement after that meeting; yes, sir.

Senator GORE. So there was no decision—although the question of involvement of the Presidency in what you call an international lie was discussed, and you expressed your view that it would be an unwise thing to involve the President in the cover story or in an international, an official falsehood?

Secretary GATES. If it turned out that Mr. Khrushchev had all the facts, which we subsequently found out that he had; yes.

QUESTION OF THE PRESIDENT ASSUMING RESPONSIBILITY

Senator GORE. How did you think his involvement or his association with this incident in its ramifications could be avoided by an assumption of responsibility by the President for the program?

Secretary GATES. I believe the President did assume responsibility, and I believe he should have assumed responsibility.

Senator GORE. Let me see if I understand you correctly. I certainly do not wish to make any implication at all. I do not wish to impute to you any meaning which you did not intend. Did I correctly understand you to say that this question was discussed at a small meeting following the NSC meeting on the 5th at which you participated as did the President?

Secretary GATES. That is correct, sir.

Senator GORE. Who else participated?

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Secretary GATES. Mr. Douglas Dillon, Mr. Allen Dulles, Mr. Gordon Gray, and General Goodpaster.

Senator GORE. At this meeting, you expressed the view that it would be unwise for the President to be involved in an international lie, I believe you described it.

Secretary GATES. That is right. This depended on what Mr. Khrushchev knew, when he knew it and if he knew everything that he claimed to know. It turned out later he did. I believe that the President should take the responsibility for the truth, for telling the truth. That is my opinion. I did not know specifically at that time the extent of Mr. Khrushchev's knowledge.

Senator GORE. You have amended your——

Secretary GATES. I didn't mean to be evasive, Senator.

Senator GORE. I understand, but you have now amended, and I would like to clarify, if I may. I know you are not trying to be evasive and I assure you that I am only seeking to develop the facts as they existed. The Government has full leeway, so far as I am concerned, to exercise censorship for security.

Now, when you expressed the view that the Presidency should not be involved in an international lie, did you at that time, on the 5th, suggest the President should assume responsibility, or was this on the 7th or the 9th that you expressed that additional view?

Secretary GATES. It was on the—I had no more meetings on the subject until the 9th, Senator. That meeting was with the Secretary of State.

OUTCOME OF DISCUSSIONS ON MAY 5

Senator GORE. Did you express the view on the 5th that the President should assume responsibility or did you express that view on the 9th?

Secretary GATES. I expressed the view on the 5th that if Mr. Khrushchev had the complete information and the pilot, that the President should assert the true story.

I expressed it again on the 9th when we knew that he had the plane and the pilot. [Deleted.]

Senator GORE. You were informed that Mr. Khrushchev had made the public speech with respect to the plane, that it was shot down or that it came down in the vicinity of Sverdlovsk?

Secretary GATES. Yes. I am not sure of my timing, Senator. We knew some information on the 5th, but we knew a great deal more a day later. He didn't report the full story until the 7th.

Senator GORE. I understand. I am only trying to develop the background of information——

Secretary GATES. Yes, sir.

Senator GORE. And the decision that was made. Although you expressed these views, and although this information was in the hands of or was discussed in the conference——

Secretary GATES. Some information was in our hands.

Senator GORE. The information which you have described?

Secretary GATES. Yes.

Senator GORE. I am perfectly willing for you to describe it.

Secretary GATES. Yes, sir.

Senator GORE. I have no description of it except as you give it to me. The decision was not reached at this meeting?

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Secretary GATES. That is correct.

Senator GORE. A decision to tell the truth was not reached at this meeting on the 5th?

STATE DEPARTMENT TO HANDLE ALL GOVERNMENT RELEASES ON SUBJECT

Secretary GATES. That is right, Senator. The only decision that was reached at that meeting was that all the statements pertaining to the incident would be handled by the Department of State.

Senator GORE. What information was the State Department to give? Was it specifically understood at the meeting that the cover story would be continued?

Secretary GATES. Yes; I think it was assumed that the cover story would be continued at that time.

Senator GORE. And the cover story was untrue?

Secretary GATES. Yes, sir. It turned out to be untrue. I mean, yes, because it was untrue. We didn't have the full facts that we had 2 days later.

The CHAIRMAN. The Senator's time has expired.

The Senator from Wisconsin.

Senator WILEY. Mr. Secretary, I have listened to this interrogation. Now see if you can't tell us the story without questioning, starting in when you first became acquainted with the facts, who was there, what was said, and then go on.

For instance, we have heard so many statements about something not being true. Now this release on May 5 was the cover story, wasn't it?

Secretary GATES. Yes, sir.

Senator WILEY. When did you first get acquainted with the situation? Start in the beginning and give it consecutively so that it will be clear.

CHRONOLOGICAL DEVELOPMENT

Secretary GATES. I first got involved in the situation when the airplane did not return to base. I knew an airplane was down, presumably because it hadn't come back and it had taken off. That was on May 1.

I had no other relationship with it until the morning of Thursday, which was May 5 when we had a [deleted] meeting of the NSC at a remote location under a civil defense exercise.

On that morning, there was the preliminary statements of Mr. Khrushchev that we had been flying over his territory, and so forth.

After the NSC meeting, there was a small meeting at which I have listed the members present, in which we discussed this matter.

Senator WILEY. Who was there?

Secretary GATES. Mr. Dillon of the State Department, Mr. Allen Dulles, Mr. Gordon Gray, General Goodpaster, and myself and the President. We discussed this whole matter. We made the decision there that the matter would be handled by the Department of State, and we adjourned.

I had no further participation or discussion concerning the incident until the following Monday morning.

Senator WILEY. What date?

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Secretary GATES. Which was the 9th. I at that time participated in a meeting in the office of the Secretary of State, and he issued his complete statement.

Senator WILEY. Have you got one of these pamphlets in front of you?

Secretary GATES. Yes, sir.

Senator WILEY. See if we can't get into the record that which is on page 4 for the press. That is the cover story up at the top?

Secretary GATES. Yes, sir.

Senator WILEY. And that is the one that had been said was a lie?

Secretary GATES. This was a cover story; yes, sir.

Senator WILEY. This was issued when you had only part of the facts; isn't that it?

Secretary GATES. That is right.

Senator WILEY. On May 9, if you will turn to page 5, you have the Department of State's release.

Senator WILEY. Was there one issued on May 9?

Secretary GATES. Yes, sir.

THE PRESIDENT PRESENT ONLY AT MAY 5TH MEETING

Senator WILEY. At any of these meetings, was the President there?

Secretary GATES. The only meeting the President attended was the meeting of May 5th, after the NSC meeting.

Senator WILEY. I didn't understand. Was he there on the 5th?

Secretary GATES. Yes, sir; after the NSC meeting. That is the only meeting at which he was present.

DECISION ON ALERT

Senator WILEY. When it was decided to have the alert, was that the judgment of all that it was in the interest of the national defense?

Secretary GATES. It was my judgment and I was responsible.

Senator WILEY. You had in mind, did you, what the condition of this country was at the time of Pearl Harbor, how we were asleep?

Secretary GATES. I certainly did.

Senator WILEY. During negotiations.

Secretary GATES. I did, indeed.

Senator WILEY. Is it your judgment from the facts that when Khrushchev went to Paris that he had already made up his mind to call off the summit meeting?

Secretary GATES. Yes; it is my judgment, Senator.

MEETING ON MAY 5

Senator WILEY. Something was said by yourself in the cross-examination to the effect that you claimed they should tell the truth. When was that, on the 5th?

Secretary GATES. I said on the 5th, if it proved that Mr. Khrushchev had the pilot, had the equipment, had the full and complete story, it later turned out that he had, that I believed we should tell the truth at that time.

Senator WILEY. That is all, Mr. Chairman.

The CHAIRMAN. Senator Mansfield.

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REFORMS IN DEFENSE DEPARTMENT

Senator MANSFIELD. Mr. Secretary, since you have become Secretary of Defense, you have made it a point to sit in on the meetings of the Joint Chiefs of Staff and if an agreement could not be reached you make the final decision.

Secretary GATES. Yes, sir.

Senator MANSFIELD. In that period you have also brought about reforms and increased the efficiency of the centralized purchasing system.

Secretary GATES. Yes, sir.

Senator MANSFIELD. In that period you have also brought about a centralization of the communications system.

Secretary GATES. Yes, sir.

Senator MANSFIELD. For all those you are to be most highly commended because I think they were reforms long overdue and it was about time they were put into effect.

REASONS FOR ALERT

Now, at the time you issued your alert of the communications system in Paris did you have any information that Soviet forces were massing or mobilizing?

Secretary GATES. No, sir.

Senator MANSFIELD. Did any one person or any group ask you to order the alert?

Secretary GATES. No, sir.

Senator MANSFIELD. You did that entirely on your own responsibility?

Secretary GATES. That is correct, Senator.

Senator MANSFIELD. Did the alert order which you issued put the forces of this country at a war readiness level?

Secretary GATES. No, sir.

Senator MANSFIELD. There was no call back of Reserves or cancellation of leave to any extent.

Secretary GATES. No, sir. There were in one or two instances some people who interpreted the JCS order as meaning that they would have a couple of more aircraft on alert, and in that case, they, on their own, recalled, I believe some pilots who were home or off duty to have approximately two more airplanes on an alert status. But this was done on their own, testing their own alert procedures under the broad order that was issued by the Joint Chiefs of Staff.

It was not the intention of this order to move forces in any way.

Senator MANSFIELD. Now, that JCS order was in response to your order?

Secretary GATES. That is right, Senator.

Senator MANSFIELD. Is there any connection between this communications alert and the recent centralization of the communications system?

Secretary GATES. No, sir, because that will not be in effect in its entirety for approximately 9 months.

RESPONSIBILITY OF THE PRESIDENT

Senator MANSFIELD. Now, during the course of your responses to Senator Gore, you mentioned the following words, "The prestige of the Presidency should not be involved."

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Isn't it true that in almost any undertaking, in a general way the prestige of the Presidency is always involved under our constitutional system of government?

Secretary GATES. Certainly.

Senator MANSFIELD. What I am getting at there is this: That whether or not he had any specific knowledge of this particular flight or of this particular order, which you issued, that nevertheless under our system he is generally responsible for actions undertaken by the head of the CIA and for actions and orders issued by the Secretary of Defense; is that correct?

Secretary GATES. He is the head of the executive branch and he is Commander in Chief, Senator, so of course he is responsible in that sense.

Senator MANSFIELD. Yes, he is generally responsible.

Secretary GATES. Certainly.

Senator MANSFIELD. He is Commander in Chief and Chief of State.

Secretary GATES. That is right.

NATURE OF A COVER STORY

Senator MANSFIELD. There has been something said about a cover story and the fact that it is not truthful. Well, isn't a cover story by its very nature almost always a lie?

Secretary GATES. Yes, Senator.

Senator MANSFIELD. That is the purpose; to seek protection in some kind of a story under a given circumstance so that for the time being at least the situation could be taken care of.

Secretary GATES. That is correct, Senator.

Senator MANSFIELD. That is all, Mr. Chairman.

The CHAIRMAN. Senator Hickenlooper?

SOVIET THREATS

Senator HICKENLOOPER. Mr. Secretary, I believe that we have had repeated statements from the Kremlin in the last weeks, months, or even years that contained threats of what the Kremlin is ready to do to the West generally or to the United States under a variety of conditions; isn't that correct?

Secretary GATES. Yes, it is.

Senator HICKENLOOPER. I believe Mr. Khrushchev has been quoted as saying that he would bury us—whether he meant economically or militarily might be argued—and I believe he stated that they have missiles on the launching pads directed at various countries of Europe as well as the United States?

Secretary GATES. That is right.

Senator HICKENLOOPER. Those statements have been reported, have they not?

Secretary GATES. That is right.

SOVIET AIR MANEUVERS OVER EAST GERMANY

Senator HICKENLOOPER. Are the Russians still engaging in scramble operations and massive airflight operations over East Germany; do you know?

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Secretary GATES. I don't know of any flights over East Germany recently, but, of course, they have some 20 divisions in East Germany.

Senator HICKENLOOPER. I don't know whether this comes within your time or not, but I have heard in one way or another in times past that they have repeatedly had large air forces in the air over East Germany.

Secretary GATES. They have large air forces stationed in East Germany.

Senator HICKENLOOPER. I mean in the air.

Secretary GATES. They have had maneuvers, yes, sir.

Senator HICKENLOOPER. They have had maneuvers toward the West German border which come very close to the West German border on occasion?

Secretary GATES. They have had them regularly; yes, sir.

Senator HICKENLOOPER. Sometimes these are rather massive maneuvers in the air?

Secretary GATES. I believe that is correct; yes, sir.

JUSTIFICATION FOR ALERT

Senator HICKENLOOPER. Well, now, recently we have heard a great deal of discussion and argument about keeping all of our strategic Air Force planes or a great many of them in the air all the time. There have been some that have advocated that and criticized us for not keeping our airplanes in the air more than we have.

Secretary GATES. I am very familiar with this argument, with the Armed Services Committee and the Appropriations Committee.

Senator HICKENLOOPER. I presume you do not see anything unwarranted about this air alert which you ordered, but I will ask you the question anyway. Do you see any reason for criticism because of a demonstration by your Department of a worldwide air alert of our forces?

Secretary GATES. I stated when I got off the airplane and was asked the question by the press on my return, I said it was incredible to me that anybody would question it.

Senator HICKENLOOPER. Well, I agree with that statement, but there seems to be some criticism nevertheless.

ADVISABILITY OF OVERFLIGHT BEFORE SUMMIT CONFERENCE A POLITICAL QUESTION

Now, on the question of whether or not, that is from your viewpoint, in your Department, the particular U–2 flight should have been cancelled on the 30th of April, or the 1st of May, or whenever it occurred, isn't that a political question and not a military question?

Secretary GATES. Yes.

Senator HICKENLOOPER. That is in view of the so-called summit conference?

Secretary GATES. Yes.

Senator HICKENLOOPER. That becomes exclusively a political question as to whether or not it was advisable at that time from the standpoint of the summit conference?

Secretary GATES. That is correct.

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Senator HICKENLOOPER. And I take it that from the standpoint of primary responsibility you have nothing to say about whether it would be cancelled or not as a political gesture in view of a political conference?

Secretary GATES. Well, I, of course, knew of the date of the summit meeting, and if I had had a strong conviction about it I would have said it even though I didn't have the responsibility for the decision. I was in an advisory capacity, but I believed that there was really no good time to stop the collection of important information. There is always some international conference or something.

Senator HICKENLOOPER. What I am trying to get at is whether you have any primary responsibility for making political decisions, or is your responsibility military decisions?

Secretary GATES. No, my responsibility is with the Department of Defense.

VALUE OF U-2 FLIGHTS

Senator HICKENLOOPER. Now, these U-2 flights have been extremely valuable in the securing of intelligence, have they not?

Secretary GATES. They have indeed, Senator.

Senator HICKENLOOPER. They have also been very valuable in securing weather information, have they not?

Secretary GATES. Yes, sir. [Deleted.]

ADVISABILITY OF ALERT

Senator HICKENLOOPER. Do you believe that, in view of the general tensions that exist and the rather jingoist statements, let's say, that have been emanating from the Kremlin from time to time, it was a beneficial thing to have this air alert as not only a show of strength but as an assurance to our friends and allies over the world that we had a readiness capability?

Secretary GATES. I do. It was not an air alert, Senator.

Senator HICKENLOOPER. Sir?

Secretary GATES. It was not an air alert. I think you miss—technically, you said air alert. It was a command readiness and communications alert. I agree, however, with what you said that it was a good thing to do.

Senator HICKENLOOPER. I shall adopt your description for my question, then, on that point.

But anyway, it was a show of ability on our part in connection with our alertness, general alertness, and our ability to put a defensive force into the air in a short time?

Secretary GATES. Yes, and we could go from there to further measures if we needed to, but this was primarily a measure of checking command and checking communications, particularly, as I said in my statement, in view of the fact that the persons involved in important policy decisions were out of the country.

Senator HICKENLOOPER. Would you agree that it either does have, or should have, a certain degree of comforting effect upon not only our own country but upon our allies that we do have these capabilities?

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Secretary GATES. I would hope it would, Senator. It seems to me this is our responsibility, to be ready and alert under these circumstances at all times, and we always are.

This was merely a matter of degree. It was a little increase in the degree of alertness. We are in an alert condition at all times.

ANOTHER COMMUNICATIONS ALERT ORDERED

As of midnight last night we are having another communications exercise, starting at 11 o'clock last night, and it is going for several days.

Senator HICKENLOOPER. This fact that we may be always alert sometimes is not fully appreciated except on occasional demonstrations of that.

Secretary GATES. That is right, and the Joint Chiefs, as a result of this experience and critique of it have recommended to me that we have these alerts on a no-notice basis more frequently.

Senator HICKENLOOPER. Thank you. My time is up.

The CHAIRMAN. The Senator's time is up.

[Deleted.]

QUESTION OF ADVANCE PLANNING FOR ACTION IN EVENT U–2 PLANE DOWNED

Senator LONG. Did you advise or consult as to whether we were to admit that we authorized these flights if and when the Soviets did succeed in bringing one of our planes down?

Secretary GATES. If we should continue them or not?

Senator LONG. No, no. What I meant is this: As a matter of forehandedness—I see a naval officer sitting behind you—they taught me the definition of that word as a midshipman—I am sure that you anticipated that sooner or later they were going to bring one of our planes down.

Secretary GATES. We knew it was a dangerous occupation; yes, Senator.

Senator LONG. You could anticipate that sooner or later one of these planes was going to fall into enemy hands?

Secretary GATES. Yes, sir.

Senator LONG. There was a distinct possibility at any moment, and had you advised and consulted as to how this matter should be handled if and when such an event materialized?

Secretary GATES. No; I had not, Senator. I was only aware of the fact that a cover story existed, but I had no part in it.

Senator LONG. And you had not been advised as to what the position of this country was going to be in the event that that happened?

Secretary GATES. No, sir; this was not my responsibility.

Senator LONG. Senator Young passed up two questions he would like for me to ask. I will just ask them on my time since I have no further questions.

He says if it were essential——

The CHAIRMAN. I think the Senator ought to ask in his own name.

Senator LONG. May I yield the remainder of my time to Senator Young then?

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The CHAIRMAN. No, you may not. You may ask any question you, yourself, but on your own responsibility.

EFFECT OF DISCONTINUANCE OF U–2 FLIGHTS

Senator LONG. If it were essential or important that the U–2 flights be made for years, right up to and including May 1, is the defense of the United States adversely effected by an absolute discontinuance on May 13?

Secretary GATES. We have lost, through compromise, an important source of information. [Deleted.]

Senator LONG. In other words, we do badly need the same information that we were gathering with the U–2 flights?

Secretary GATES. We need a continuity of this information, I think, Senator.

Senator LONG. Then if that be the case, in your judgment was it essential or advisable that the flight of May 1 should not have been canceled?

Secretary GATES. In my judgment, it was proper to fly the flight of May 1.

Senator LONG. Thank you. I have no further questions.

The CHAIRMAN. Is that all?

The Senator from Vermont?

WAS ALERT RELATED TO SOVIET PLANS?

Senator AIKEN. Mr. Secretary, at the time you ordered the communications alert on May 15, did you have any apprehension at that time the Communists might be considering or planning surprise action in any part of the world?

Secretary GATES. No, sir, I felt that the situation was one that was at best, not very constructive. We knew the sense of Mr. Khrushchev's remarks, but I did not anticipate a surprise attack.

I didn't order that kind of an alert.

Senator AIKEN. In other words, it seemed like a good thing to do at the time?

Secretary GATES. I think it was, yes, sir.

Senator AIKEN. Was the response to the order fully satisfactory?

Secretary GATES. Yes.

Senator AIKEN. Have you had any similar alerts since?

Secretary GATES. I testified a minute ago, I believe, that we started one at 11 o'clock last night which will run for several days.

[Deleted.]

The CHAIRMAN. Senator Morse.

Senator MORSE. Mr. Secretary, if this has been covered, please tell me.

Secretary GATES. Yes, Senator.

IMPLICATIONS OF SOVIET THREAT AGAINST OVERSEAS BASES

Senator MORSE. I am somewhat concerned about the implications, propagandawise and otherwise, of the alleged threat of the marshal of the air forces of the Soviet Union that if they know that another spy plane is leaving a foreign base the instructions are to shoot a

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missile to that base. What is your judgment as to the seriousness of that threat?

Do you think it is a bluff or do you think that he means it?

Secretary GATES. Well, Senator, this is awfully hard to know. He must know that if he did such a thing that we have allied commitments. If it was an allied country, for example, he would be starting a very major problem for himself.

Senator MORSE. That is the point I want to raise.

Secretary GATES. And this would only be done with the assumption that he would take the consequences of an act that would probably start a general war. [Deleted.]

Senator MORSE. Doesn't it seem to imply, Mr. Secretary, that if he is not bluffing, that they thereby mean to start a general war over espionage activity on the part of the United States or any other foreign power that sends a spy plane over their territory?

Doesn't that seem to be——

Secretary GATES. If I understand your question, Senator, I think he must take the responsibility for starting a general war or very likely starting a general war if he hits one of our Allied bases for any reason.

Senator MORSE. Could it possibly imply that the Russians are of the opinion that our power of both defense and aggression is such that they are willing to take it on? To put my question a different way——

Secretary GATES. I doubt very much that they are willing to take it now. I think they absolutely know they will commit suicide the moment they try it because I think they are fully informed in every way possible about, practically, the exact defense posture of the United States.

Senator MORSE. If that is true, and I think it is true, that they ought to know that if they get involved in a nuclear war there can't be any victory for them, and I doubt if there could for us, but apparently this type of military mind in Russia possessed by their air marshal is ready to start a nuclear war. Wouldn't that be a fair deduction from this threat unless it is a bluff?

Secretary GATES. Senator Morse, I think it is a part of a stepped-up, cold war aggressive, propaganda campaign. That is what I think it really is, because I don't believe that Mr. Khrushchev wants to start a war which he knows will be the end of his country.

Senator MORSE. I am inclined to think that is probably true of Khrushchev. But the reason I am asking this line of questions is to find out from you if the leaders in our country have reason to believe that Khrushchev is being pushed in Russia by a preventive war group that entertains the point of view that sooner or later they are going to have to fight the United States, and that they think probably now is a better time to do it than later.

Do we have any intelligence information that would justify our believing that a military group in Russia is now taking over and pushing Khrushchev to the side?

Secretary GATES. We do not have. We can at this time only speculate. It might be possible that the military group has come into more power in Russia or that Mr. Khrushchev may have had some of his power diluted. This is, however, just speculation, and

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it is, I suppose, rather dangerous to speculate, but we do not have any hard facts on the subject.

INFLUENCE OF, AND DANGER IN, SOVIET MILITARY HIERARCHY

Senator MORSE. I understand they have some 250,000 military officers, army and naval and air. Could it be possible that within the military in Russia they see the possibility of reaching an agreement on total disarmament which means that they would be moved out of the very favored position in Russian society they now occupy, and that we need to be on the alert to the possibility that a great military change is taking place in Russia in the form of a military hierarchy taking over control from the Communist leadership?

Secretary GATES. Well, I couldn't agree with you more, sir, that we should certainly be on the alert to this possibility and continuously so. I agree that we must consider this as one of the possibilities.

Senator MORSE. What concerns me is that as far as their leadership is concerned and as far as I have any reason to believe, based upon the briefings we have had from our own American leaders, we are dealing with a group of very amoral leaders in Russia. And when you get amoral leaders among the military establishments, such as they have, I think we have cause for concern as to whether or not even in desperation they might not be willing to start a war. And if this is more than propaganda, if this is more than bluff, if this is more than what you suggest might be the case of a new step-up in the cold war to try to frighten our allies, then we have to take a long look, it seems to me, as to our responsibility to history in respect to following an espionage course that might cause these amoral men in desperation to start a war because there is always the hope on our part that we may be able to contain them until we can negotiate through the United Nations a workable and enforceable total disarmament program.

NEED FOR INFORMATION BALANCED AGAINST POTENTIAL DANGER

I have raised this question because I don't think that in terms of history we can completely ignore our responsibility in dealing with a group of desperadoes such as I think the Russian military people are, and so it raises the question how far we can justify going morally, in connection with an espionage system such as the U-2 system, when we know we are dealing with a group of amoral military leaders in Russia who might start a nuclear war because of their complete lack of appreciation for the value of human life.

It puts us in a difficult position, it seems to me. We have our own security to protect, we have our duty to gather information, but the nature of the "beast" with whom we are dealing—in quotation marks I put the word, of course—nevertheless puts upon us some responsibility, it seems to me, to not go too far in our own espionage program if by going a certain distance might indirectly put us in a position where history might record that we knew we were dealing with that kind of a gang and knowing it we nevertheless followed an espionage course of action that they considered so violated their sovereign rights that they were willing then to take that last step into a nuclear war.

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Secretary GATES. Well, the Senator can speculate more intelligently, I am sure, than I can on military people.

Senator MORSE. Not at all.

Secretary GATES. But basically military people are conservative, worldwide, and basically they are well informed on military matters, and therefore, the military in the Soviet Union should know better than the political leaders that they will be lost, and slaughtered and devastated in a nuclear war.

On the other question, it seems to me again as a lay person that our survival is at stake. If he threatens us, I have repeatedly testified in Congress, that I didn't think he intended to make any significant concessions at any meeting, that we have not prepared our defense program on that basis, that we had to keep it under continuous review, at all times, and with a completely closed country, and our survival threatened, if he builds up a capability for a surprise attack, it seems to me absolutely vital that we obtain all the information we can from every source.

Senator MORSE. Thank you very much.

The CHAIRMAN. The Senator from Indiana.

Senator CAPEHART. I have no questions except I will say I think you did the right thing by ordering the alert.

I hope that you will continue to be on alert. I hope you will continue to get intelligence on Russia in every conceivable way we can.

The CHAIRMAN. Is that all?

The Senator from Ohio.

SECRETARY GATES' SERVICE IN DEFENSE DEPARTMENT

Senator LAUSCHE. Mr. Gates, how long have you been the Secretary of Defense?

Secretary GATES. Only since last December, sir.

Senator LAUSCHE. Were you in the Department prior to that time?

Secretary GATES. Yes, sir; I have been there since 1953, in the Department.

Senator LAUSCHE. In what capacity?

Secretary GATES. I was Under Secretary of the Navy, then Secretary of the Navy, then Deputy Secretary of Defense.

SOVIET KNOWLEDGE OF OVERFLIGHTS

Senator LAUSCHE. Based upon your knowledge, when did the Soviet hierarchy first know of the fact that there were foreign planes flying over the Soviet?

Secretary GATES. I don't think we can confirm, Senator. We just have to take Mr. Khrushchev's statements at face value.

I think that it is debatable how much he knew. I assume he knew that there were planes flying. He said he knew. He says he had known since he was here in the United States. But I don't think we can definitely confirm this.

Senator LAUSCHE. Testimony has been given by some witness that, I think on July 2, 1956, he made a protest that there was a plane overhead in the Soviet.

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Secretary GATES. Yes. I have the record of this. I believe this was the time General Twining visited the Soviet Union. They made a public protest of overflights in July of 1956.

Senator LAUSCHE. And since that time U-2's have been making missions over the Soviet?

Secretary GATES. That is correct, Senator.

Senator LAUSCHE. And Khrushchev, after May 1, made a statement that he knew at the time that he was at Camp David that planes were flying overhead?

Secretary GATES. Yes, sir; he did.

Senator LAUSCHE. Then the proof indicates that at the time he was invited to the United States, at the time he went to Camp David, and at the time that he arranged for the summit conference, he knew of these planes being overhead?

Secretary GATES. Yes.

Senator LAUSCHE. And he did nothing about it? Can a staff member tell?

Secretary GATES. I can't say that we can confirm this, Senator.

Senator LAUSCHE. I understand.

Secretary GATES. This is his statement.

SOVIET MOTIVATION FOR ATTENDING SUMMIT

Senator LAUSCHE. That is correct. When was Khrushchev in the United States?

Mr. MARCY. September 1959.

Secretary GATES. September 15 through the 27th.

Senator LAUSCHE. He made no statement to the President at that time about planes being overhead?

Secretary GATES. He did not.

Senator LAUSCHE. And he agreed to meet at the summit?

Secretary GATES. That is right.

Senator LAUSCHE. Then on May 1 this U-2 was brought down in the Soviet and he then made these declarations that have been reported. That is correct, isn't it?

Secretary GATES. Yes, sir.

Senator LAUSCHE. Now, then, what, in your opinion, motivated him in agreeing to have a summit conference, accepting our invitation to come to the United States, meeting with the President, while he knew that this supposed grave transgression of his rights was taking place?

Secretary GATES. I can only hazard again a personal opinion, Senator. My opinion is that he believed that he could not make any progress at the summit meeting, and he made a pre-positioned, he took a pre-position—made a brief on it and came to Paris to wreck the summit quite apart from the U-2 incident.

U.S. AND SOVIET INTELLIGENCE-GATHERING OPPORTUNITIES

Senator LAUSCHE. Based upon your opinion or active knowledge, during this period was there espionage practiced by the Soviets in our country?

Secretary GATES. Yes; there was.

Senator LAUSCHE. Is that answer based upon your knowledge?

Secretary GATES. Based upon reports that I have read.

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Senator LAUSCHE. From the Central Intelligence Agency?

Secretary GATES. Or from the FBI.

Senator LAUSCHE. In the Soviet, all things are hemmed in against an individual getting into proximity of their bases. Am I correct in that?

Secretary GATES. Yes, sir.

Senator LAUSCHE. Does that situation prevail in our country?

Secretary GATES. It certainly does not, Senator.

Senator LAUSCHE. Then there is a tremendous difficulty in the ability of obtaining intelligence by our agents in the Soviet as compared to their ability, through their agents in our country?

Secretary GATES. That is correct; and there is obviously no reason for him to overfly the United States.

IMPORTANCE OF U–2 FLIGHTS

Senator LAUSCHE. Based upon the knowledge that you acquired through the U–2's, what would be your opinion about our intellectual ability to pursue properly the development of our national defense?

Secretary GATES. I think we had a responsibility to take every means we could.

Senator LAUSCHE. That is not my question. My question is, If you did not have the knowledge acquired through the U–2's, could you have intelligently developed your national defense to cope with the actual, potential military power of the Soviet?

Secretary GATES. Not as well, Senator; by no means.

Senator LAUSCHE. By no means whatsoever?

Secretary GATES. We have other means.

Senator LAUSCHE. Yes?

Secretary GATES. That gives us other information, but this was a very importance piece of information.

Senator LAUSCHE. If you didn't have that information, do you feel that the security of our country in all probability would have been affected because of our inability to develop properly our military strength?

Secretary GATES. I think this was—I want to be careful in my answer because this is one source of several sources of intelligence. It is a very important one. I think it would have been affecting our ability to properly defend the United States if we didn't have this information.

DEMANDS PRESENTED BY KHRUSHCHEV

Senator LAUSCHE. Now, getting down to the matter of the May 16 meeting, have you formulated any opinion as to whether Khrushchev, when he left Moscow, already had prepared these four unacceptable demands that he made upon the President with respect to the U–2 incident?

Secretary GATES. Everyone is entitled to a personal opinion, Senator. I have an opinion, yes, sir, that he had very definitely, because the moment he arrived in Paris he presented these conditions to Mr. de Gaulle along with a copy already in French.

Senator LAUSCHE. That is—the fact is that he was supposed to go to Paris on May 15; Sunday?

Secretary GATES. Yes; he came on Saturday night, I believe.

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Senator LAUSCHE. And for some reason that has not been explained, he decided to come there in advance?

Secretary GATES. That is right.

Senator LAUSCHE. On Saturday?

Secretary GATES. That is right.

Senator LAUSCHE. And early in the morning at 11 o'clock on Sunday, he asked for a conference?

Secretary GATES. Attended by de Gaulle.

Senator LAUSCHE. Attended by Malinovsky, himself, and de Gaulle?

Secretary GATES. That is correct.

Senator LAUSCHE. At that meeting, he set forth these unacceptable demands?

Secretary GATES. That is right, sir.

Senator LAUSCHE. Then in the afternoon at 4:30 he asked for a conference with Macmillan?

Secretary GATES. That is correct.

Senator LAUSCHE. And he again set forth those four demands?

Secretary GATES. That is correct.

Senator LAUSCHE. This is merely asking for your opinion.

Do you believe that in self-respect and maintenance of the President's position he could conform to the demands made in that ultimatum?

Secretary GATES. I certainly do not. I certainly believe he could not, I guess, would be a better answer.

Senator LAUSCHE. I am of the opinion that when Khrushchev left Moscow he knew there was not to be a summit conference. He prepared his paper. He had his mode of operation completely outlined.

Secretary GATES. I share that point of view, Senator.

SHOULD U–2 FLIGHTS HAVE BEEN SUSPENDED BEFORE SUMMIT CONFERENCE?

Senator LAUSCHE. Now, you have stated that you did not feel that we could, in the face of these discussions about a summit conference, suspend our activities with respect to the security of the country; is that right?

Secretary GATES. That is right, sir.

Senator LAUSCHE. If there was to be a temporary suspension of these U–2 flights, when should they have begun? This is speculation. I am just trying to search it out. The discussions for a summit conference preceded by far the September visit in the United States, and then from September to May 16 practically 9 months elapsed. Should we, last September, have discontinued our U–2 flights?

Secretary GATES. Not in my judgment, Senator. I think it would have been most incorrect to have suspended them.

Senator LAUSCHE. Do you believe the Soviet, because of the arranged summit conference, discontinued its activities?

Secretary GATES. I am sure they didn't, although I don't know, but I am perfectly sure they didn't.

Senator LAUSCHE. That is all.

SOVIET NOTE OF MAY 10

The CHAIRMAN. Mr. Reporter, the staff overlooked a document which should have been included in the background information. It

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is the Soviet note of May 10, which was sent to our Government, as reprinted in the New York Times of May 11, and I ask that it be inserted in the record so that this step in the development from a documentary point of view may be complete.

(The note referred to appears on p. 195 of appendix 1.)

QUESTION OF ALTERNATIVES TO MAY 9 STATEMENT OF STATE DEPARTMENT

The CHAIRMAN. Mr. Secretary, referring just a moment to a previous question, on the May the 9th meeting in which the issuance of the statement by the Department was considered, were there any alternative statements proposed and considered to the one which was issued?

Secretary GATES. Not in principle, Senator Fulbright.

The CHAIRMAN. Not in principle?

Secretary GATES. But there were, of course, various language versions considered.

The CHAIRMAN. Did anyone at that meeting raise the point that for the President, the Chief of State, to assume personal responsibility would be a departure from the historical practice of this country?

Secretary GATES. I think this was understood, Senator, and I believe that we felt the circumstances were different from anything that had prevailed heretofore.

The CHAIRMAN. But the point was raised and discussed?

Secretary GATES. I can't accurately say that it was raised and discussed but it was certainly in my mind and I believe it was obvious to all of us that it was a departure from precedent.

The CHAIRMAN. It was a departure from precedent in this country. Do you know of any other country that has followed this policy?

Secretary GATES. No; I do not.

The CHAIRMAN. Was anyone concerned that this might have far-reaching implications for the future of our intelligence operations?

Secretary GATES. Well, we knew that it already had marked the end of this particular method of collection of intelligence because of its being compromised [deleted].

The CHAIRMAN. Did I understand you to say that to your knowledge there was no time in the last few years, in which you are familiar with our activity, that U–2 flights were suspended for political reasons.

Secretary GATES. Not to my knowledge, Senator; that is correct.

The CHAIRMAN. Mr. Secretary, were you ever consulted with regard to the wisdom of holding a summit conference?

Secretary GATES. No; I was not, Senator.

POSSIBILITY OF AGREEMENT WITH RUSSIA ON DISARMAMENT AND NUCLEAR TESTING

The CHAIRMAN. Do you personally believe there is any reasonable hope for any agreement with the Russians with regard to disarmament?

Secretary GATES. I think it is extremely doubtful, Mr. Chairman. I think that the Soviets are playing off-and-on-again tactics; sometimes cool, sometimes cold, sometimes hot.

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I believe that their proposal for disarmament or total disarmament is completely unrealistic. I find it rather difficult to believe they will ever agree to the controls and inspections that we will of necessity insist upon to make progress on disarmament.

The CHAIRMAN. Do you believe the same with regard to nuclear test bans?

Secretary GATES. I am not so definite on that, Mr. Chairman, from a personal point of view. We seem to have made more progress in the negotiations on tests than we have in the other field. But I again worry about the possibility of having valid control and inspection systems for either of these efforts.

The CHAIRMAN. I understood you to say, I believe, in answer to a question by Senator Morse that you did not believe any significant concessions could be expected from the Soviets at the summit meeting.

Secretary GATES. That is right. This has been consistent with my testimony before the committees of Congress all of this year.

QUESTION OF RELOCATION OF SOVIET BASES

The CHAIRMAN. Is it now probable that, as a result of the revelation of the efficiency of the U-2 photography, the Russians will now change the location of many of their strategic bases?

Secretary GATES. This is quite an undertaking. You don't do the construction that is involved in strategic bases easily or quickly, and they don't know precisely how much information we have about them, and I would think that they would perhaps take different means of building new bases or of dispersing bases or something of that character. But I don't believe that it is very practical to assume that they would shift major installations because of the character required to handle the strategic weapons.

The CHAIRMAN. What I meant is, do you feel that the information you now have may become rapidly obsolete because of their knowing you know about them they will change them, so that you will have a great deal of difficulty in keeping up with their location?

Secretary GATES. We will have to augment other methods toward obtaining this information.

[Deleted.]

RELEASE OF SECRETARY GATES' PREPARED STATEMENT

The CHAIRMAN. Mr. Secretary, was your prepared statement released to the press?

Secretary GATES. Was what, sir?

The CHAIRMAN. Was the statement which you read initially released to the press?

Secretary GATES. I didn't release it, unless the committee did.

The CHAIRMAN. No, the committee didn't, as far as I know.

Captain JOHNSTON. It has been released by Mr. St. Claire; I believe that he had released it. We didn't release it.

The CHAIRMAN. Was it your purpose to release it?

Secretary GATES. It was up to you, Mr. Chairman.

The CHAIRMAN. Well, normally, the initial statement made by witnesses is the same as their own testimony. They either censor it or release it. I was just inquiring.

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Secretary GATES. It is all right with me if it is all right with you that it be released, Mr. Chairman. I understand it has been released.

The CHAIRMAN. It has been released?

Secretary GATES. That is what I understand.

Captain JOHNSTON. Yes, sir, I was informed by someone from the committee, I believe Mr. St. Claire, that it had been released.

The CHAIRMAN. By whom?

Captain JOHNSTON. By the committee, Senator.

The CHAIRMAN. May I ask the staff, did you release it?

Mr. MARCY. No, Mr. Chairman, this will just be released in the normal way. It is put on the tape here. It went through the censors and, unless they took any portion of it out, it went to the public.

The CHAIRMAN. I just was wondering.

Secretary GATES. I am sorry, Mr. Chairman, I considered it your prerogative. I have no objection one way or the other.

The CHAIRMAN. It usually follows the same procedure. You make the statement and then it goes through the record if the censors wish it. Was this statement cleared with the State Department before you made it?

Secretary GATES. Yes, sir.

Senator LAUSCHE. Mr. Chairman, may I suggest that we find out whether a copy got in the hands of the newspapermen other than through normal sources here.

Mr. MARCY. No, sir, that did not happen, not through the committee. Everything goes through the regular process, through the censors, and so on.

The CHAIRMAN. Well, I asked the clerk a moment ago if you had released it. He understood you had—I mean that you had given it to the press before.

Secretary GATES. I didn't give it to the press, Mr. Chairman.

The CHAIRMAN. You or one of your aides, I don't know.

Secretary GATES. No, we did not release it.

TIMING OF KHRUSHCHEV'S DECISION TO WRECK SUMMIT

The CHAIRMAN. You stated very positively that you believed the Chairman of the Council of Ministers, Mr. Khrushchev, before he came to Paris, had already made up his mind to wreck the summit. Can you tell us how and why you arrived at that opinion?

Secretary GATES. Well, I felt, and again speaking personally, I felt that the fact that he arrived on Saturday night and asked for these appointments with President de Gaulle and Prime Minister Macmillan, and he arrived with a position paper translated in French in the case of de Gaulle and given orally by translation in English to Macmillan, a position paper that he used almost verbatim as the first part of his text the following morning, was pretty good indication that he had a preconceived plan at the summit meeting and was planning to, in my judgment again, and used the fact that there were 3,000 newspapermen in Paris and he had a platform to issue all of these statements from. Then I believe there were indications in other speeches that he made prior to the summit that he was going to adopt later on.

The CHAIRMAN. What in your opinion caused him to arrive at this conclusion to wreck the conference?

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Secretary GATES. Why, I believe that he found that he had been unsuccessful in creating any disunity among the allies. That he was not going to get any substantive concessions himself, according to his terms, on Berlin and other critical issues that he might consider important, and that he wasn't going to get a blanket disarmament check without controls, and so forth. And I believe he felt that he was not going to make any progress at the summit.

EFFECT OF THE U–2 INCIDENT ON KHRUSHCHEV'S SUMMIT ACTIONS

The CHAIRMAN. Do you believe the U–2 incident contributed to that belief?

Secretary GATES. I, frankly in my judgment it did not, Senator Fulbright. I believe it gave him, it contributed to his public case, but I don't think it contributed to his position.

The CHAIRMAN. You don't think that was a significant element in causing him to arrive at this conclusion?

Secretary GATES. I really do not; no, sir. I believe it was a factor in his, an important factor in helping him make his case, but I don't think it had anything to do with his policy decision.

The CHAIRMAN. Why do you think he would be better off and what reasoning leads you to this conclusion? Why is he better off having followed the course he did, than having gone to the conference and having it result in no concessions?

Secretary GATES. Only he can answer that, Senator.

The CHAIRMAN. Why do you think he left in his initial statement what is called an "out" for the President, by saying he thought the President didn't know about this?

Secretary GATES. I don't know what his intentions were, whether that was an out or whether that was just a statement that he believed. I really don't know.

The CHAIRMAN. If it was an out, it would be inconsistent with his determination to wreck the conference, would it not?

Secretary GATES. Sir?

The CHAIRMAN. If it was an out as it has been alleged, it would be inconsistent with his determination to wreck the conference. He wouldn't want to give the President an out, would he?

Secretary GATES. I never personally considered it was an out. I just thought he was using this as part of his speech—I don't consider it was an out.

The CHAIRMAN. Well, he did say that he thought the President didn't know about it, didn't he, in his initial statement?

Secretary GATES. Yes; he did.

The CHAIRMAN. My time is up.

Senator Morse, do you have any further questions?

Senator MORSE. Senator Wiley is next.

The CHAIRMAN. Senator Wiley?

Senator MORSE. I have some more questions.

Senator WILEY. Mr. Secretary, we know very well that Khrushchev had canvassed the situation with Macmillan, de Gaulle, with Adenauer and with our President, and they were all agreed and firm on the proposition that Khrushchev wanted, to wit, to divide Germany, and so forth and so on. Now, he was acquainted with that fact from his conversations, was he not?

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Secretary GATES. I believe he was, sir.

Senator WILEY. And, in other words, he knew that if he went to the conference and couldn't get his way, which would be very apparent, that wouldn't sit so well with the people of Russia?

Secretary GATES. I think that is a good speculation.

Senator WILEY. So, it seems to be the consensus of those people who claim to know, including yourself, that the U–2 incident would give him something to hang on his previous determination and that he utilized. Do you agree to that?

Secretary GATES. Yes, I think he used the U–2 as a tool rather than as a matter of principle. I think he decided that there was no progress for him at the summit.

SOVIET KNOWLEDGE OF OVERFLIGHTS

Senator WILEY. Well, there is just this one other question. I think you have answered it, but see if I can't get it out into the open and get it so there won't be any question: Is it your opinion that he had known of the U–2 incidents for a long time—I mean the U–2 flights?

Secretary GATES. I think I believed him when he said that he knew we were overflying the Soviet Union. I don't believe he knew their capabilities. But I think he knew that unidentified aircraft were over his territory.

Senator WILEY. That is all, Mr. Chairman.

The CHAIRMAN. Senator Morse?

RELATIONSHIP OF U–2 FLIGHTS TO SUMMIT CONFERENCE

Senator MORSE. Mr. Secretary, I want to pursue a bit further the line of questioning that I was conducting when my time was up because I think you have got to deal also with the problem of where we go from here, in view of Russian attitudes at the present time.

We have the air marshal's statement now which has not been countermanded as far as we know by Khrushchev, that if an American U–2 plane flies from any base, goes over Russia, they will fire a missile against that base.

Your testimony, I think, justifies my concluding that if they fire at that base, that under our commitments under NATO, our obligations to defend our allies, we will meet that force, and that that may very well start general war.

As I understand also your testimony, you share my doubt as to whether or not the air marshal is bluffing, whether or not this is propaganda in the cold war or whether or not this is an announcement of a definite decision as to what they are going to do.

So we have to discuss this hypothetically from this point on. Let's assume that he means exactly what he said, and because of my fear of the type of military mind they have in Russia as contrasted with our own, namely, the difference between amoral military leaders and moral military leaders, I am very fearful that the group in control of the Russian military at the present time means exactly what it says.

They will fire a missile at any base from which an American U–2 plane flies. Doesn't that put squarely up to us then the question as to whether or not we can justify being a party indirectly to the start-

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ing of general war by flying any U–2 planes from any foreign base, in view of that announcement by the Russian air marshal?

Secretary GATES. We have announced that the U–2 flights will not be resumed. The President has announced this. This is, of course, known to them and that was announced prior to this Defense Minister's statement that you refer to.

Senator MORSE. That is what I want to clarify for this record because most respectfully, I don't think it is clear in the record that this committee has made to date.

The President announced at Paris that they were suspending them.

Secretary GATES. He made the statement, Senator, that he couldn't commit the next President, but as far as he was concerned, during his administration, the flights were stopped.

Senator MORSE. Then do you wish to express the viewpoint that at the present time the United States does not intend to continue any U–2 flights over Russia?

Secretary GATES. I think we made a commitment not to.

Senator MORSE. There has been a considerable amount of discussion in these hearings and outside of these hearings that in view of that situation that confronts us, it is intended to continue U–2 flights; that the President's statement was a statement made in connection with the summit conference situation.

In other words, the summit conference situation having blown up, it does not follow that that statement of the President now continues in effect.

It is your testimony that it is your understanding it does continue in effect?

NATURE OF PRESIDENT'S COMMITMENT NOT TO CONTINUE FLIGHTS

Secretary GATES. I am not a lawyer, Senator, but I think you could take the legal point of view that the President had no commitment because of the blowup of the summit conference, but from a national point of view, prestige and the standpoint of the honorable point of view, I think the United States has made a commitment regardless of the technicality of the timing of the decision, so in my judgment we have made a commitment not to fly U–2 during the administration of this President.

Senator MORSE. I don't care to get into any argument over semantics, but only judging from what I read about the interpretation of the President's speech to the Nation, there are many news comments interpreting the President's speech to the Nation as a speech that does not commit this Nation to a discontinuance of U–2 flights, now that the summit conference has blown up.

I think it is very important that we make clear our position. I am not passing judgment now on what our position should be.

Secretary GATES. Yes, sir.

INTERPRETATION OF PRESIDENT'S COMMENTS ABOUT NOT RESUMING OVERFLIGHTS

Senator MORSE. But we have problems, may I say most respectfully, with people in other parts of the world, even including the segments of the population of our allies, raising the question as to whether or

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not the President's speech to the Nation the other night means that we may continue U–2 flights.

In view of the statement of the air marshal of Russia as to what they are going to do if they do continue, my question is this: Should not our Government restate its position in regard to the continuation of U–2 flights and give the world assurance at the present time that we do not intend to continue U–2 flights and thus risk the possibility that the Russians may send a missile to the air base from which any U–2 flight might leave?

Secretary GATES. Senator, I have in my hand the President's statement in Paris in which he said:

> In point of fact, these flights were suspended after the recent incident, and are not to be resumed. Accordingly, this cannot be the issue.

That is a categorical statement that they are not to be resumed. This is what I understand our position is.

Senator MORSE. The President didn't say that in his speech to the Nation the other night. There isn't anything in the President's speech to the Nation the other night that categorically and unequivocally assures to the world that we are discontinuing, as a matter of espionage policy, the flying of any U–2 planes over any foreign territory.

All I seek to do at this point in the record, and please let me assure you of this, is to raise this point so that our Government can remove any suspicion or fear in other parts of the world in view of the Russian air marshal's statement, that the world doesn't have to be concerned about a nuclear war being started by us by sending a U–2 plane from any foreign base over Russia.

I think the world is entitled to that assurance at this moment in order to produce the relaxation that I think is necessary for the continuation, through the United Nations I hope, of a good faith, this attempt to reach some understanding with Russia.

Secretary GATES. It may well need clarification, Senator. I didn't think it did. I thought it was perfectly clear to me that we had made a commitment so long as the President is in office, not to fly the U–2 airplane, and everyone understood it. If they don't, perhaps it should be reexamined. However, you are now faced with making another statement in face of a threat, and I don't know whether this is a wise move or not.

Senator MORSE. I think it is a wise move if we honestly believe that this is more than a threat, that this is an announcement of military policy that they intend to deliver on.

WORLD OPINION ON U–2 OVERFLIGHTS

I don't intend to argue the point. I think the judgment of the world will be against us if, in view of what you call this threat, we should continue U–2 flights, because I think we have to share joint responsibility with Russia then for starting a nuclear war, because I seriously question whether world opinion will ever be with us on this kind of espionage conduct.

I think that world opinion is against our sending a U–2 flight over any foreign territory, because I think most people in other parts of the world consider it a form of constructive aggression.

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That is all, Mr. Chairman.

The CHAIRMAN. Senator Hickenlooper, do you have any further questions? I think you are next.

Senator HICKENLOOPER. Mr. Secretary, with reference to the discussion which you have just had with Senator Morse—I think perhaps I only have a comment because my comment will go to a matter of personal opinion—as I understand the line of questioning that has been going on here, and as I think it probably will be interpreted, the United States is required to take the burden for all the ills of the world and take the responsibilities for all the mistakes in the world; that we must do everything, including complete submission to the demands and the threats of the Kremlin; and that the opinion of the world is apt to be slanted against us unless we do this at this time.

I have heard from so many sources over the country that we have to do this or that or the other thing as a gesture that we are not war-minded or that we are not warmongers, or that we really have some interest in our fellow man.

RECORD OF THE UNITED STATES AS A PEACEFUL NATION

Now, if the record of the United States over the last good many years of humanitarian activities, of fantastic expenditures of billions of dollars for peace, of fostering all kinds of conferences, of making all kinds of offers to meet all kinds of reasonable propositions for peace, based only upon reasonable agreements for their assurance of being carried out—if that isn't an assurance to the world, I personally think that to humble ourselves further by yielding to this threat of this military man in Russia would certainly not add to our prestige in the least, and it probably would be of little use in the eyes of the world, at least to those that we would expect to stand by us in an emergency.

I can't follow that line of reasoning, especially in view of the past record of the United States.

We started out at the end of World War II with the sole and exclusive possession of the atomic bomb, the ability to blow any nation off the map and anybody else if we wanted to if we were war-minded. Nobody else had it. We offered to give it up to an international agency to get out of the atomic business, to turn over all fissionable materials to an international agency; all we asked was that reasonable inspection, reasonable assurance, would be given that the international agency would have control and that no nation would cheat on this obligation.

Never in the history of the world, as far as I know, has a nation, possessing the exclusive ability and the exclusive power to destroy any other nation in the world, have they ever given that up or offered to give it up voluntarily.

We go from that step by step with vast amounts of money, with all kinds of humanitarian offers, with all kinds of peaceful offers, with all kinds of peaceful efforts in the world and I just want to make my position clear: we have stated we are not going to overfly Russia, at least so far as President Eisenhower's administration is concerned, with U-2's—that has been stopped. If we did continue it sometime in the future in the interests of the security of this country, I think

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the security of this country comes first in our responsibility, and we must take whatever reasonable means we have and whatever calculated risks that may be involved in order to secure essential information and in order to secure and maintain our proper defensive posture.

I feel that very deeply and I am not questioning you about it.

You don't have to agree or disagree. I merely wanted to make that statement in view of the fact that I don't agree that we have continually to humble ourselves in the eyes of the world, because I think it can do nothing but destroy the confidence, in many cases, that other Nations have in us if we continue to bow to the threats that emanate periodically from the Kremlin, and we have had just as bad threats in the past as this one. As I pointed out in my previous questions, where they said they have rockets pointed at our bases, they have rockets on the pads pointed at other countries in Europe; they know how many rockets they are going to put on Paris and that they are going to bury us one way or another, and so on, and I think there comes a time when even the world has to turn and stand fast. That is all I have to say.

The CHAIRMAN. Is that all?

Senator HICKENLOOPER. Yes.

The CHAIRMAN. Senator Gore?

[Deleted.]

The Senator's time is up.

The Senator from Ohio, any questions?

Senator LAUSCHE. No further questions.

KHRUSHCHEV'S CHANGING VIEWS ON A SUMMIT CONFERENCE

The CHAIRMAN. Mr. Secretary, I don't want to labor this too long, but I am interested in your reasoning. I didn't get to finish that question. Let me go back. Do you think when Chairman Khrushchev was in the United States last September that at that time he had an intention to have a summit conference?

Secretary GATES. I would only be speculating, Mr. Chairman. I think he did.

The CHAIRMAN. I want to know what happened between then and May 15, in your opinion, that caused him to take the firm decision which you stated a moment ago you believe he had.

Secretary GATES. I really don't know the value of my opinion, Mr. Chairman, but my opinion is that he has tried for many years to divide our allies from us. He has tried to divide the NATO membership in particular. He has resented the bases that surround his country, and he has had, I think, as a No. 1 objective the division of our security and collective alliances. I think he found during this intervening period that he couldn't make a dent in the solidarity and unity of these relationships, that he couldn't get anybody to change their position on Berlin. He found the British and the French and the United States stalwartly together on that subject, and that he found the NATO alliance in good shape and strong, and that he was going to run into a position where he would make no progress, and as someone else has remarked, I believe, during this testimony, he would probably lose some face at home if he couldn't make any progress.

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U–2 INCIDENT'S EFFECT ON SUMMIT CONFERENCE

The CHAIRMAN. Do you think he would have refused to participate if there had been no U–2 incident?

Secretary GATES. I think he would have—again, we must only speculate, Senator—I think he would have probably employed tactics that would have ruined the summit from within.

The CHAIRMAN. But you think he would have participated?

Secretary GATES. I think he would have participated and found some other mechanism of destroying it.

[Deleted.]

The CHAIRMAN. Mr. Dulles testified that the Air Force gave CIA weather forecasts that were helpful to the U–2 operation; is that correct?

Secretary GATES. That is correct.

[Deleted.]

SOVIET MILITARY PREPAREDNESS

The CHAIRMAN. What inference from Soviet military preparedness can properly be drawn from the U–2 incident?

Secretary GATES. This, pieced together and repeated and associated with other sources of intelligence builds up, unfolds a story that definitely disclosed a military posture.

It builds up a story that gives you a judgment on a capability for a surprise attack. It gives you a judgment on important installations. It gives you some judgment on production. It gives you some judgment on logistic backup and actual military sites, so that I would say it gave you a very definite look-see at their military posture.

The CHAIRMAN. Is it possible for you to give us a judgment? Was this preparation and strength very impressive? Was it greater than you had expected?

Secretary GATES. Coming into two recent jobs I have had, which is the first time I was ever involved in this, I would say that it impressed me, Senator.

The CHAIRMAN. In other words, the result of your overflights and the information you got has given you a better appreciation of their military strength and that appreciation is that they are very well armed—is that correct—better than you expected?

Secretary GATES. In some case, yes. In some case, perhaps less well than they advertised.

EFFECT OF SUMMIT FAILURE ON U.S. MILITARY PROGRAMS

The CHAIRMAN. Does this failure of the summit and all that has resulted from it give you any new ideas as to the level of expenditures of programs relating to defense?

Secretary GATES. Not immediately, no, sir. But I believe I have said when I started to testify in January, I repeatedly stated we didn't expect to have any significant or substantive concessions. We believed there was a tactic on the part of the Soviet Union. We didn't know how long it would last and we are not basing our military programs on this premise and I also said that we should keep them under continuous review and as late as April we went back with a major revision in our military programs to the Appropriations Committees.

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I believe now we should continue this careful and continuous process, and I have no desire right now to make any further recommendations to the Congress. The Senate Appropriations Committee are about to mark up the defense bill I believe next week or this week.

[Deleted.]

POSSIBLE INTERPRETATIONS OF THE ALERT

The CHAIRMAN. One inference I wish you would comment on that might have been drawn from the ordering of the test on May 15 is, I believe: Would it be fair to draw the inference that you had any doubt about the readiness of our Armed Forces.

Secretary GATES. No, sir, but it is a very good move and we should do it more frequently to have a no-notice alert communications and command readiness test, and we hope to do this, I say we started one again last night which has been long planned, it is going to be about a 7- or 8-day exercise.

The CHAIRMAN. It has been long planned.

DECISION TO ORDER ALERT

Was the one on the 15th long planned?

Secretary GATES. No, sir.

The CHAIRMAN. When did you first think of doing that?

Secretary GATES. There was another one planned for about that period of time, as a matter of fact, I made the decision to do this myself.

The CHAIRMAN. After you arrived in Paris?

Secretary GATES. Yes, sir.

The CHAIRMAN. Do you think that that might have been construed as a provocative act under the circumstances that then existed in Paris?

Secretary GATES. No, sir, it was made after midnight on Sunday night. It was not intended nor was it worded as a provocative message. The first word in it was "Quiet," and the last words in it were "minimum need to know."

It was not meant as provocative. It was not meant as either an offensive or defensive alert.

In fact it was not issued as such. If we were going to go on that kind of an alert we would have had a higher degree of readiness than the Joint Chiefs of Staff issued.

The CHAIRMAN. I didn't mean you intended it as such. Don't you think reasonable people might have regarded it as a provocative act?

Secretary GATES. I think reasonable people would have regarded it as a prudent act.

The CHAIRMAN. But not as a provocative act?

Secretary GATES. That is right.

The CHAIRMAN. My time is up. We have a member here who has just come in. Would you care to ask any questions, Senator Humphrey?

Senator HUMPHREY. Can I follow up on two or three of yours?

The CHAIRMAN. You have 10 minutes to do as you please.

[Deleted.]

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OVERFLIGHTS CONSIDERED ESSENTIAL

Senator HUMPHREY. Do you think it was essential to have overflights in order to gain the kind of information that is supposed to have been gained in recent months?

Secretary GATES. Yes; this was by all means our best information.

Secretary HUMPHREY. Well, it might be your best information.

Secretary GATES. Yes; I think it was essential; yes; I do.

[Deleted.]

SOVIET AIRCRAFT ACTIVITIES

Senator HUMPHREY. Have we ever shot down any Soviet aircraft that have ever been over American territory?

Secretary GATES. No, sir.

Senator HUMPHREY. Have we shot down any Soviet aircraft that have been over areas where we have some military responsibility?

Secretary GATES. Not to my knowledge.

Senator HUMPHREY. Not over Korea; Japan?

Secretary GATES. You mean in peacetime?

Senator HUMPHREY. Well, in the armistice period.

Secretary GATES. No, sir; not to my knowledge.

Senator HUMPHREY. We have not?

Secretary GATES. Not to my knowledge, sir.

Senator HUMPHREY. I had been informed once that we had, and that is why I had asked the question.

Secretary GATES. Maybe we ought to qualify this. There has been speculation that "volunteers" have flown aircraft that have been shot down. These volunteers may have been Soviet, but, as far as I know, any identified as a Soviet aircraft has not been shot down.

Senator HUMPHREY. Has the Soviet Union protested to the United States because of an attack on our part on Soviet aircraft?

Secretary GATES. I can't answer that question, Senator, because my knowledge is that they have not. I don't think they have. No; I don't think so, sir.

Senator HUMPHREY. Do you have reason to believe that the so-called volunteers might very well have been a little less than volunteers, possibly engaged actively in Soviet espionage?

Secretary GATES. Well, there has been sort of a technique evolving over a period of time in various places of the world where volunteers have appeared and we have always been a little apprehensive about them.

Senator HUMPHREY. Just a little?

Secretary GATES. No, sir. [Laughter.]

Senator HUMPHREY. That is all.

The CHAIRMAN. Senator Wiley?

Senator WILEY. None.

The CHAIRMAN. Senator Morse?

Senator MORSE. I have a few more, Mr. Secretary, pursuing the same line of questioning I was pursuing before.

The President the other night in his speech to the Nation indicated very clearly that a nuclear war would produce devastation upon all participants.

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POSSIBILITY OF A GENERAL WAR

Going back to my hypothetical, assuming that we should fly a spy plane out of some foreign base and assuming that the Russian air marshal makes good on his threat and strikes that airbase with Russian missiles and starts a general war, do you think we could win it?

Secretary GATES. Yes, sir.

Senator MORSE. You think we could destroy Russia and have enough of the United States left so that we could remain a power?

Secretary GATES. Yes, sir; because in this case he would, by initiating this attack, give considerable warning to our retaliatory forces and with that warning, we would move in.

Senator MORSE. Your view then is that the United States could win a nuclear war?

Secretary GATES. If it is started under those circumstances.

[Deleted.]

Senator MORSE. Do you think that the Russian military are aware of the fact that we could win a nuclear war if they started that war by simply sending a missile to one air base from which a spy plane might fly?

Secretary GATES. I think they are well aware of it.

Senator MORSE. Do you think then that if he kept his threat of sending a missile to a foreign air base from which a spy plane might be flown, he probably would go much further than that and send missiles elsewhere and if he knows it is going to lead to a general war, start a complete general war?

Secretary GATES. I think he would have to.

Senator MORSE. In your opinion, could we win that war?

Secretary GATES. Well, we could do what we call in the military, prevail in general war, but there would be great damage to the United States.

Senator MORSE. There would be terrific mutual destruction in a general war?

Secretary GATES. Yes; terrific damage.

Senator MORSE. Therefore——

Secretary GATES. But everything depends, Senator, on a lot of factors. If you vary any part of the equation you vary the answer. In other words, time of warning, reliability of missiles, ability to fire a salvo of missiles worldwide against deployed and U.S. forces at home and abroad. These factors and the accuracies of these weapons—any one piece of this equation varies the answer.

INTERPRETATION OF PRESIDENT'S COMMENTS ON SUSPENSION OF U–2 FLIGHTS

Senator MORSE. Therefore, referring most respectfully to Senator Hickenlooper's observation, do you think that we would be showing a sign of weakness, that we would be guilty of appeasement, that we would be surrendering to threats if we removed any doubt in the world at the present moment by notifying the world that we have no intention of using military aircraft espionage tactics henceforth either by CIA, by NASA, by the Defense Establishment or by any other agency of the American Government?

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Secretary GATES. Well, I wouldn't know quite how to answer your question, Senator, because maybe some of us that live so close to these things have a different understanding than the public has. It is so clear in my mind that the President has made a commitment not to fly these airplanes during his administration that I believe that the question becomes hypothetical, and I believe if it is clear to other people as it is to me that this is so, then it would be, I believe, stepping up to a threat. But if it is not clear, and I am incorrect in this, then I think we ought to take a look at it.

Senator MORSE. I am so anxious to see to it that we make it crystal clear because I am very much concerned about world reaction to our present position. I think we are living in the moment now where we can stop an adverse world reaction, and I think we are living in a moment where there is great danger that a substantial segment of world opinion is going to go against us, unless we are willing to make crystal clear that we are not going to, through any agency of our Government, resort to aircraft espionage, because we are dealing here when we are dealing with espionage, as you so very well, I think, described it yourself, with a form of activity that is a pretty ugly business.

Secretary GATES. Yes, sir.

Senator MORSE. And we all know that it isn't based on principles of truth. In espionage, you do what is necessary to protect your country, including deception and engaging in immoral acts. [Deleted.]

Now, I don't think we humble ourselves. To the contrary, I think we put them on the defensive in world opinion if we say to the world:

> Listen, we want the Russians to understand that they are going to have to assume full responsibility for any starting of a war. We have said and we repeat to the world that we have no intention of using aircraft in espionage work over foreign territory.

You think it is perfectly clear. I have just come from across the country and I can give you assurance that it isn't in my judgment clear in American public opinion today, and you have really got a segment of public opinion in this country that wants that assurance from the President, because they take note of the fact that in his speech the other night he wasn't even as definite as he was at Paris in regard to this matter.

NEED FOR ASSURANCE OF CESSATION OF AIRCRAFT ESPIONAGE

Secretary GATES. Senator, under the American tradition, I would say that the President says he isn't going to overfly Russia during his administration, any circumvention of that statement would not be in character with either the President or our country. To me, it is completely clear, but I respect your judgment.

Senator MORSE. I may be completely wrong. My only point is that we can afford, it seems to me, as a Nation that does seek peace, to reassure the world as many times as that when assurance might help the cause of peace, and in doing so I don't think we humble ourselves. To the contrary, I think we put Russia on the defensive. It will help us in my judgment to win the so-called battle of propaganda for peace and strengthen us in getting these issues into the United Nations.

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Of course I would say this. I think the President is to be commended for making clear in Paris that he is suspending U–2 flights—that is what he said; U–2 flights.

I think he is to be commended for that, and I hope that those who seek to replace him will give the world assurance immediately that when any one of them is elected President that will be their policy, too, because if all this is a moratorium for a few months, it is not going to strengthen America's position in world opinion. They want to know whether or not this is going to be the policy of the United States, because, in my judgment, if you continue espionage work by way of aircraft, you are going to lose the world opinion in southeast Asia, Latin America, and Africa, the opinion of which America has got to win in the decades ahead to survive, because if that part of the world goes against us, it is only a matter of a few decades before we will cease, in my judgment, being a Nation.

You have got to win to the cause of freedom those hundreds of millions of people, and you are not going to do it in my judgment if you let Khrushchev get by with a propaganda drive now that we are the ones that are committing a form of aggression by carrying out an espionage program. We don't like to face up to it but in my judgment that is going to be the verdict of those people.

The CHAIRMAN. The Senator's time is up.

Senator Gore?

SECRETARY GATES' PARTICIPATION IN ISSUANCE OF STATEMENTS

Senator GORE. Mr. Secretary, I understood you to say that the decision on the 9th that the President should assume full responsibility was a unanimous decision. Did I correctly understand you?

Secretary GATES. The statement that was issued was a unanimous paper. I think I am answering you yes.

Senator GORE. I wanted to give you an opportunity to affirm that, and you so do now.

You did not participate, I believe you told me, or you told the committee, in any conference between the 5th and the 9th.

Secretary GATES. That is correct.

Senator GORE. So you did not participate in a conference or in a communication between the Department of State, the President at Gettysburg, or otherwise, with anyone regarding the issuance of the statement which was issued on the 7th by Mr. Herter?

Secretary GATES. No, I did not.

Senator GORE. Which partially acknowledged the mission of the plane.

Secretary GATES. That is correct. I had no participation in that in any way.

Senator GORE. I believe that concludes my questions, Mr. Chairman.

The CHAIRMAN. Senator Lausche?

KHRUSHCHEV'S ATTITUDE FOLLOWING VISIT TO THE UNITED STATES

Senator LAUSCHE. I want to explore a bit the course of conduct taken by Khrushchev after his visit to the United States, concerning his attitude especially on West Berlin and West Germany. Isn't it a fact that following his visit to the United States, there was shown

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by him a conciliatory attitude for a period of about a month or two? Are you able to answer that?

Secretary GATES. My impression is about the same as yours, Senator, that there was sort of a tone of conciliation in the air.

Senator LAUSCHE. We have had before this committee the Antarctic Treaty that has been recommended.

Secretary GATES. Yes, sir.

Senator LAUSCHE. That was signed by the Soviet and by the United States.

Secretary GATES. Yes, sir.

Senator LAUSCHE. And that, I think, was last December 1. And there was progress made for a period on the matter of banning nuclear tests.

Secretary GATES. Yes; there was progress made.

Senator LAUSCHE. In fact, there was more progress made during that period than there had been at any other time on that subject.

Secretary GATES. I think that would be fair to say, that it looked more hopeful.

Senator LAUSCHE. On November 14 in a speech Khrushchev brutally attacked Adenauer and the German Republic.

Secretary GATES. I remember the speech.

Senator LAUSCHE. You remember that speech?

Secretary GATES. Yes, sir.

Senator LAUSCHE. And there was some speculation in the minds of the people in our Government as to what his purpose was in making that attack when ostensibly there was to be a conference to reach some agreement on West Germany and Berlin.

Now then, on December 1, he began repeating his threats that he would sign a separate peace treaty with East Germany. Is it not a fact that his attack upon Adenauer and upon the German Republic and his purpose to sign a separate peace treaty, was confirmation of the immovable position he took before he met at Camp David about West Berlin and East Germany?

Secretary GATES. Yes; I think it was. I think his position was well advertised, and we felt in the Department of Defense that we were living under a threat of a separate peace treaty at that time.

Senator LAUSCHE. Then he has the Baku speech of April 25 in which he gave a harsher version of what he had been saying for months about East Berlin, West Berlin, and the German Republic. That is in April, pretty close to May 16, and then we have those circumstances in which you point out that he had a translated paper originally written in Russian into French translation so that he gave it to——

Secretary GATES. De Gaulle.

Senator LAUSCHE. De Gaulle. How did he present his paper to Macmillan?

Secretary GATES. My understanding, Senator, was that he didn't leave a paper with Macmillan. He talked from the same paper and it was translated through an interpreter to Macmillan verbally. This is my understanding.

Senator LAUSCHE Isn't it also a fact that during all of this time and especially in the several months preceding the conference, the supposed conference, the four powers stated that there would be no yielding on West Berlin, and our rights in West Berlin?

Secretary GATES. That is right.

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KHRUSHCHEV'S SUMMIT CONFERENCE AIMS

Senator LAUSCHE. In your opinion, what was the primary thing that he was aiming for in the conference? I am speaking of Khrushchev.

Secretary GATES. You mean when he agreed to go to a summit conference?

Senator LAUSCHE. And down to the end.

Secretary GATES. I testified that I think he thought he would have his way and make some peace treaty in Berlin with some kind of give on the part of our allies and our allies refused to give.

REASONS FOR REVOKING INVITATION TO PRESIDENT EISENHOWER

Senator LAUSCHE. All right. Now then, have you given any thought to why he revoked the invitation to the President to come to the Soviet land?

Secretary GATES. Well, again we speculate but in my opinion the last thing he wanted was for the President to travel around his country and be acclaimed and received by the population of Russia.

Senator LAUSCHE. Do you think that he had flashes in his mind about the acclaim that Nixon got in Poland, and in other places?

Secretary GATES. He probably did.

Senator LAUSCHE. And do you think that he kind of thought that there would be demonstrations for the President of the United States by the Russian people unparalleled anywhere?

Secretary GATES. I believe there would have been.

Senator LAUSCHE. That is my honest conviction, that he did not dare have the President meet the Ukrainian people and the normal Russian people, excluding the Communists, in that trip to the Soviet and that is why the invitation was revoked.

Senator WILEY. Will the Senator yield?

Senator LAUSCHE. I yield.

POSSIBLE INFLUENCE OF THE CHINESE COMMUNISTS ON KHRUSHCHEV'S THINKING

Senator WILEY. I think there are some other facts there that fit into the picture that you have very dramatically given us.

Do you remember after he came to America he went back and he canvassed individually the various heads of the various states, and then he made a trip out east and he met Mao Tse-tung?

It was after that that he made that Baku speech. He made several other speeches, and if you remember, the papers were pretty well filled with the thoughts that the Chinese Communists were telling him, and that at the time that he did go to Paris, that conditions were such that the evidence indicated the Chinese were in Russia. Now all this bolsters the conclusion that the Secretary has made, that it wasn't the U–2 incident. That was just something that he got hold of as an ostensible reason.

The other was that he couldn't get his way and that, I understand, is your position.

Senator LAUSCHE. I have nothing more to ask you. Thank you very much, Mr. Gates.

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EFFECT OF DENIAL OF OPPORTUNITY FOR PRESIDENT TO VISIT SOVIET UNION

Senator GORE. If the Senator would yield, I would like to observe that I was in the Far East at the time President Eisenhower made his visit to India and other countries, and there was a tremendous favorable reception. It served the cause of our country magnificently well.

I think it is a great loss to us that the President has been denied the opportunity to visit in the Soviet Union. It would have, in my view, been a great contribution. He is unquestionably a great exemplary influence for America, and I agree with you, Senator Lausche and Senator Wiley, that the denial of the opportunity of this visit is a great loss to us.

I do not know whether Mr. Khrushchev wanted it or did not want it. Everyone can draw his own conclusions there.

I wish now that the exchange visit had been arranged before the summit conference. Perhaps we would have had a different result.

Senator LAUSCHE. Mr. Chairman, I would like to ask a question.

The CHAIRMAN. The witness would like to make a comment.

PRESIDENT EISENHOWER'S DIGNITY AND CHARACTER AT PARIS MEETING

Secretary GATES. I want to make a comment I sort of feel like making, Mr. Chairman. I think you know about this because you were there. I think everyone should be terribly proud of the dignity and character of the President in this Paris meeting.

I happened to be sitting next to him and it was a most remarkable performance of strength of character and dignity of any man I have ever seen.

Senator GORE. You might be interested to know that I immediately took the floor and expressed such views, and I do not believe you will find any member of this committee has criticized the President's conduct while in Paris.

Secretary GATES. I am sure of that. The purpose of my remarks was not intended to do anything but just make a statement. I know he has had remarkable support of not only the Congress and this country, but of all of our allies too, the NATO meeting that followed the Paris meeting was a remarkable meeting.

CONCLUDING REMARKS

The CHAIRMAN. Is that all, gentlemen?

Senator WILEY. I want to express what you usually do, the appreciation of the committee for the fine work of the Secretary here this morning.

Senator LAUSCHE. I did want to go into this speech of Senator Dodd where he points out how Communists took charge in the organizing of the meeting in New York of the Committee for a Sane Nuclear Policy. But I am not going to go into it.

The CHAIRMAN. Mr. Secretary, I want to thank you for your very frank and candid responses and for the patience that you have shown in bearing with the committee in asking these questions. I think you have made a very useful record for the benefit of the committee, and I think we understand what has gone on much better than we did before you came up here, and I hope that the record, as censored by the proper authorities, will not in any way embarrass you.

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Thank you very much, Mr. Secretary.

Secretary GATES. I hope not, thank you, Mr. Chairman.

Senator GORE. Mr. Chairman, before concluding the hearing I would wish to express to you my personal appreciation for the dignity, intelligence, and discretion and the courage you have displayed and statesmanship during the course of this hearing.

The CHAIRMAN. Thank you very much.

CHALMERS ROBERTS' CHRONOLOGY OF EVENTS

Senator GORE. Now I ask unanimous consent to have printed in the record a chronology of events which I found exceedingly well done by Mr. Chalmers Roberts.

The CHAIRMAN. Without objection it is so ordered.

(The chronology referred to follows:)

[From the Washington Post, May 27, 1960]

CHRONOLOGY OF U–2 INCIDENT TRACED IN TANGLED WEB OF SUMMIT DISPUTE

WHO WAS RESPONSIBLE?

(By Chalmers M. Roberts)

Who was responsible for the incredible assortment of conflicting statements and contradictory assertions when the Eisenhower administration was confronted with the U–2 spy plane crisis?

This is the most immediate question in the tangled web of the U–2 affair and the subsequent collapse of the Summit Conference in Paris. What follows is a detailed examination of the facts about the Administration's handling of the U–2 case.

It should be noted beforehand, however, that there are other important parts to the whole story: The apparent public hardening of American policy toward the Soviet Union prior to the U–2 affair; Soviet Premier Nikita S. Khrushchev's reaction to that hardening; Khrushchev's reactions to the American accounts of the U–2 case; and the internal Soviet pressures on Khrushchev, before and after the spy plane was downed, because of his year-old policy of trying to do business with President Eisenhower.

Whether or not Khrushchev would have scuttled the Summit, had there been no U–2 incident, is not now clear; there are divided opinions in the Administration on that. A good many diplomats do tend to agree with what President Eisenhower said to the congressional leaders yesterday—that Khrushchev may have scuttled the conference because he was under "pressure by the Stalinists," those in Moscow suspicious of any dealing with the West, "and the Chinese" Communists who have openly disagreed with Khrushchev's policies.

But that question is only indirectly related to the handling of the U–2 affair by the Eisenhower Administration.

The chief figures in the U–2 drama in Washington were President Eisenhower, Secretary of State Christian A. Herter, Under Secretary C. Douglas Dillon, Central Intelligence Agency Chief Allen W. Dulles and White House Press Secretary James C. Hagerty.

It is evident from the record that much of the confusion sprang from the fact that no one acted in supreme authority in directing the Administration's actions.

Here is the chronological record as far as it is known today:

May 1.—The U–2 flight of pilot Francis G. Powers took place on this date because of a clear weather forecast. That forecast also indicated that such good weather probably would not be repeated for some weeks; that is, until after the Summit Conference, then 2 weeks off. CIA officials say the equipment carried by Powers, including the tiny poison needle, is standard equipment carried by all Strategic Air Command crews. It is designed to help a crewman escape if downed in enemy territory. Powers never was ordered to use the needle to avoid capture; it was for use to avoid torture, if captured, according to CIA officials. The pistol was not for murdering Russians but for shooting small game, it is contended.

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Second flight

The day of Powers' flight, there was a second U–2 flight from Turkey. This was a meteorological flight outside the Soviet Union, the kind of flight the National Aeronautics and Space Administration unwittingly thought all U–2's were making. NASA was, of course, the "cover" for the clandestine flights over the Soviet Union.

These penetrations of Soviet air space had been going on for four years with results highly gratifying to American intelligence officials. There had been a great many of these flights and the Powers mission was not the first designed to cross the Soviet Union. Others had succeeded when he failed.

So detailed were the protographs brought back by the U–2s that at one time the State Department's Policy Planning Staff considered a proposal to show them to Khrushchev. The idea was to use them in an effort to break down his resistance to inspection and control for various disarmament schemes.

The proposal was rejected, however, partially on the grounds that Khrushchev already knew of the flights and that such a move might lead him to make such a public row that they would have to be discontinued.

Cutoff planned

CIA officials contend that there was to be a cutoff of U–2 flights before the Summit, that the question was how much time constituted a margin of safety. Nevertheless, the Powers mission was permitted to take place two weeks before the Summit. In his speech on Wednesday the President implied he fully approved of that.

Mr. Eisenhower said that, as to complaints over the timing of the flights so close to the Summit, "there is no time when vigilance can be relaxed." By implication, he meant there was no reason to cancel the flight because of the impending conference with the Russians.

However, this has not always been the President's policy. In September, 1956, in the midst of the Suez crisis negotiations with the Russians as well as the Egyptians—the President did order a halt to the U–2 flights. Then he apparently wanted to avoid an incident which would make negotiation more difficult.

There is no evidence, however, that the President was aware beforehand of this particular flight or that either the State Department or the CIA thought his specific approval necessary. He had delegated authority for the flights, once having approved the entire U–2 scheme following Soviet rejection of his "open skies" plan at the 1955 Geneva Summit conference.

May 1–4.—During this period the CIA and the State Department knew that Powers was missing; they hoped he had crashed and that pilot and plane had left no tell-tale evidence. The initial confusion over the missing plane, as to whether it was Powers or the legitimate meteorological flight in Turkey the same day, was soon cleared up. There is no evidence that the Administration laid out any plan of how to handle the possible disclosures later made by Khrushchev.

May have been misled

The Administration may have been misled into thinking Khrushchev would remain silent because of Soviet action over the expected visit to the United States of the boss of the Soviet Air Force, Air Marshal K. A. Vershinin.

On May 2 the Soviets asked for a 48-hour postponement of the announcement of the visit. But on May 4 they agreed to a joint United States-Soviet announcement and it was made that day. The visit was canceled on May 13 after Khrushchev's U–2 disclosure.

On May 3 it was announced from Istanbul, Turkey that a single-engine Air Force plane was missing near Lake Van, not far from the Soviet border. It was described as a high altitude research plane belonging to NASA.

The report said the plane was one of two which had taken off from the United States base at Incirlik near Adana, Turkey, on a weather reconnaissance mission. The other plane returned safely but the pilot of the missing craft was said to have reported his oxygen equipment was out of order.

Standard story

This was the standard sort of "cover" story for the missing U–2, issued in the hopes that it would suffice. It was not known here whether Powers' U–2 went down or why. To this date, in fact, there is only Khrushchev's word that it was downed near Sverdlovsk, deep inside the Soviet Union.

May 5.—Khrushchev announced to the Supreme Soviet in Moscow the bare details of the U–2 flight, deliberately (he said later) withholding information

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which would have let Washington know that Powers was alive and that much of his equipment had been captured intact. He set a trap into which the Eisenhower Administration fell.

In his Wednesday speech, Mr. Eisenhower contended that the "covering statement," as he called it, was imperative "to protect the pilot, his mission, and our intelligence processes at a time when the true facts were still undetermined."

On May 5 Secretary Herter was in Athens, en route home from a NATO foreign ministers conference in Turkey. In charge of the State Department was Under Secretary Dillon.

Dillon's responsibility

Under the President's delegation of authority, it was Dillon's responsibility for what next occurred until Herter's return late on May 6. It was on May 5 and 6 that the administration allowed itself to be entangled in a series of lies about the U–2.

When newsmen went to Press Secretary Hagerty for comment on Khrushchev's speech, Hagerty was careful to say only that the President did not know of the news story about the speech.

News of the speech arrived here just after the President had left by helicopter for a National Security Council meeting at a secret hideout, part of a civil defense exercise. There is no evidence on whether the President at that meeting discussed what to do about the Khrushchev disclosure. The subsequent record indicates that he left it to Dillon and the State Department.

State Department spokesman Lincoln White, who received his instructions personally from Dillon, said that "it may be" that the plane Khrushchev referred to was the missing so-called NASA aircraft. It was also announced that the President had ordered an immediate inquiry into Khrushchev's accusation.

Trouble compounded

This semi-lie was aggravated by NASA's press chief, Walter T. Bonney. Unaware that NASA was being used as a "cover" for the spy flights, Bonney said at a press conference that the plane was on a wholly peaceful mission. He gave details of the plane's Adana take-off, its route within Turkey and the pilot's alleged report of his oxygen trouble. The Administration's story thus was that a peaceful flight outside Soviet borders might have by accident transgressed the Soviet-Turkish border.

There is no evidence that the President or Dillon, or anyone else in authority in the Administration, took charge of the whole affair and told NASA to say nothing. There have been subsequent hints from the White House, however, that some such order went out to NASA but was overlooked or disregarded. The record here is not clear.

May 6.—In Moscow it was claimed the U–2 was shot down by a rocket on Khrushchev's personal order, but other details still were withheld. However, Soviet Foreign Minister Andrei Gromyko termed the American explanation "nonsense."

"Full facts" asked

The State Department said it was asking the "full facts" in Moscow. White, still acting under Dillon's orders, declared that "there was absolutely no—n-o—deliberate attempt to violate the Soviet airspace." The lie thus was compounded.

Around dinner time Herter arrived home from Greece to take charge of the State Department.

The strongest evidence that the handling of the U–2 affair was left by the President to the State Department—first to Dillon, then to Herter—comes from Vice President Richard M. Nixon. On a May 15 television show Nixon gave this explanation, putting part of the blame for the fumbling on the insistent demand of newsmen for the facts:

"Now, let's look at the problem with which our people in the State Department were confronted when this information developed. They did not know at the outset what the Soviet Union knew. They did not know that the pilot had been recovered and that they had obtained information from him or otherwise which made it imperative we acknowledge that these flights had taken place.

Alternative question

"Now, some would say then, 'well, why then didn't we keep our mouths shut and say nothing and wait until we found out what they knew?'

"And here again we have the problem of the open society. We have newsmen in Washington. The newsmen descended upon the State Department and other

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officials in great numbers. They had a right to. And they asked for the information. What about this? And, so under the circumstances, it was felt that the best thing to do was to engage in effect in what usually is engaged in where so-called espionage activities are undertaken, evasive actions—evasive actions, so as to protect the pilot in the event that he had been captured and also evasive actions so as to give the Soviet Union, Mr. Khrushchev, for example, an opportunity to accept the consequences of this flight without admitting as he has had to admit that it had been conducted for espionage purposes."

Later in the same program Nixon added that "they had to make a snap decision at the moment and it proved that—it turned out that that decision was wrong and in these kinds of activities, we, of course, want to try to avoid mistakes if we can."

References missing

Nowhere in the three-and-a-half-hour television program did Nixon refer to any presidential direction in the U–2 crisis, other than his approval of the flights some years earlier. Nor was their any reference to his own part in the affair. Nixon, of course, sits in the National Security Council.

Nixon did say that he was "privy" to the U–2 reconnaissance policy "and I do endorse it." He also said that "I knew about this flight * * *."

On Friday afternoon, May 6, the President went to his Gettysburg, Pa., farm for a weekend of rest and golf. He did not return to Washington until Sunday, May 8 but he was in telephone communication with Herter during the weekend. Hagerty, who accompanied the President to Gettysburg, also talked by phone to Herter.

May 7.—Khrushchev, in a second Moscow speech on the U 2, disclosed the pilot was alive and talking and that much of his equipment had been captured intact. Khrushchev showed the Supreme Soviet photos taken from the U–2 of Soviet military installations and he detailed the plane's equipment.

Genuine information

American officials, who received the speech in the morning, Washington time, knew Khrushchev was using information that was genuine and that some of it could have come only from Powers himself.

Khrushchev quoted Hagerty as saying that "the President, in his opinion, knew nothing about the incident involving the American plane. I fully admit (said Khrushchev) that the President did not know that a plane was sent beyond the Soviet frontier and did not return."

The Khrushchev speech resulted in a series of all-day conferences in which the chief figures were Herter, Dillon, Allen Dulles and a number of lesser State Department officials, including Herter's adviser on Soviet affairs, Charles E. Bohlen.

Out of this came a unanimous decision to tell the truth—but not all the truth. The dinner-hour State Department statement said that the flight referred to by Khrushchev "was probably undertaken by an unarmed civilian U–2 plane * * *."

Flight justified

The flight was justified on the grounds of the need "to obtain information now concealed behind the Iron Curtain" to lessen the dangers of a surprise attack on the free world in general and the United States in particular.

On the critical issue of who was responsible for the flight, however, the statement lied. It said that "as a result of the inquiry ordered by the President it has been established that insofar as the authorities in Washington are concerned there was no authorization for any such flight as described by Mr. Mr. Khrushchev."

In making this statement, chiefly the decision of Secretary Herter, those involved were guided by a number of considerations. They felt that Khrushchev had the evidence and therefore an admission was essential despite the earlier lies. But they were trapped in a dilemma on the issue of responsibility. They decided it was best to avoid admitting any responsibility by President Eisenhower even at the cost of accepting the resultant impression that Washington's control was so lax that American pilots around the world could go off on their own on a mission that might provoke a war.

Dulles willing

During the State Department deliberations Allen Dulles made it clear that he, as head of CIA, was prepared to take full responsibility for the flight, that if the

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Administration wanted to pin the blame on him to avoid blaming the President, he would agree. But this idea was not accepted as being practical in view of Khrushchev's disclosures.

Herter read the draft statement on the phone to the President in Gettysburg. He approved it without changing a word.

In part, at least, Herter's decision to tell the lie that no one in Washington authorized the flight also was based in the slim hope that somehow Khrushchev would accept it. The Secretary and his aides had noted Khrushchev's acceptance of what he had taken as Hagerty's disclaimer of any Eisenhower responsibility.

May 8—While the world assessed the seemingly incredible American admission that the U–2 had indeed been on an espionage flight, President Eisenhower returned to Washington and met with Herter at the White House.

Notes to Britain, France

The same day Khrushchev sent notes to Britain and France about the forthcoming summit conference. In them he complained about the U–2 but gave no indication it would be used to wreck the conference as was to be the case.

By now Hagerty was alarmed at the implications of the admission statement, implications that the President did not know what was going on. He was insistent to Herter that this should somehow be eliminated. It is not clear whether the President said the same thing to Herter directly but if he did there would seem to have been no reason for Hagerty to do so.

May 9—After another State Department conference, Herter put out a statement in his name saying that "penetration" by the U–2s of the Soviet Union had been going on for four years, that this had been done by presidential orders "since the beginning of his Administration" in order to gather intelligence. But Herter added that "specific missions of these unarmed civilian aircraft have not been subject to presidential authorization." This, at last, appeared to be the truth.

Unaware of implication

This was the statement which left the implication that such U–2 flights would be continued over the Soviet Union. But there is reason to believe that none of those involved at State Department was conscious of any such implication when they drafted the statement. They took the view, shared by the CIA, that the U–2 setup now was "a blown agent" to be discarded, that other intelligence gathering methods would continue, however.

Nonetheless the implication was there and neither State nor the White House did anything to correct it until the President himself told Khrushchev in Paris a full week later that "these flights were suspended after the recent incident and are not to be resumed."

The President said Wednesday he wanted no public announcement until he met Khrushchev in Paris. American officials also claimed the flight suspension was ordered the previous Thursday, May 12, which is at cross-purposes with the claim that no implication of further flights was contained in Herter's May 9 statement.

Nixon unaware

Indeed, Nixon in his May 15 television appearance seemed unaware that the flights had been cancelled. He then said:

"The first responsibility of the President of the United States * * * is to protect the security of this country and of free peoples everywhere from the devastation that would result from a surprise attack. Now, that is why these flights were made in the first place. That is why an indication has been made that such activities may have to continue in the future * * *"

Herter and Dulles appeared on May 9 before a specially arranged closed-door Congressional leadership meeting. To at least some of those present Herter left the clear implication that the flights would continue.

May 10.—The Soviet news agency, Tass, described Herter's statement as "a frank attempt to legalize and justify violation of the state frontiers of other nations for espionage purposes." A Soviet note to the United States avoided blaming President Eisenhower personally but, in referring to the May 7 statement by State, said it did "not correspond to reality." It charged that the U–2 flights "are carried on with the sanction of the Government of the United States of America."

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Welcome doubted

May 11.—At an exhibition in Moscow of the U–2 wreckage and equipment, Khrushchev said Herter's May 9 statement made him doubt "Our earlier conclusion" that the President himself did not know of the flights. He said he doubted the President would be welcome in Russia during his scheduled June visit there.

When asked whether the U–2 incident would come up at the Summit Conference, Khrushchev replied: "It is already the subject of worldwide discussion. Therefore I believe there is no need to put it on the discussion schedule at the Summit Conference."

The same day at his press conference here President Eisenhower took full responsibility for the U–2 flights, said nothing to counter the implication that they would continue, remarked that "no one wants another Pearl Harbor."

May 12–14.—During this period Khrushchev went to Paris a day early, arriving on Saturday, May 14. Herter arrived on May 13 but there was no United States-Soviet contact. On the 13th the Soviet Union sent protest notes to Norway, Pakistan and Turkey warning against further use of their territory for such missions as those of the U–2 which Khrushchev had claimed took off from Pakistan with the expectation of landing in Norway.

On the 12th the United States sent a note to Moscow which said the United States had "fully stated its position" about the U–2 incident in the May 9 Herter statement.

By now President Eisenhower's responsibility for the U–2 flights, if not for the specific Powers mission, had been firmly established on the public record.

May 15.—The President arrived in Paris just before Khrushchev's call on French President de Gaulle. The President considered two possible moves in this final day before the Summit Conference was to open: To ask for a bilateral meeting with Khrushchev and to announce publicly that no more flights would be made.

But the President decided against either step. He did so chiefly on the basis of de Gaulle's report of the hard stand taken by Khrushchev in their talk that morning. His aides told him they deduced from Khrushchev's words with de Gaulle that the Soviet leader had come to Paris bound by a prior Moscow decision by the ruling Presidium, that he therefore could not be swayed by either suggested Eisenhower move.

Allen statement

On this same day in Washington George V. Allen, chief of the U. S. Information Agency, said on a television show that Herter "has not said that we are going to continue to fly" U–2 missions, that "he hasn't said one way or another." This statement surprised State Department officials who now say Allen was talking entirely on his own, that he had consulted nobody in advance.

May 16.—At the only Paris confrontation between President Eisenhower and Khrushchev, the Soviet leader said the United States had "torpedoed" the conference. He demanded that the President apologize for the flights, call off further flights and punish those responsible for Powers' mission. These were the same demands of which he had informed de Gaulle the day before. He charged the President with making "treachery" the basis of his policy toward the Soviet Union.

To this the President responded by terming Khrushchev's demands an "ultimatum" which "would never be acceptable to the United States." He also told Khrushchev that U–2 flights had been suspended and would not be resumed. The two men parted in anger. The Summit had collapsed before it had begun.

SPEECH OF SENATOR DODD

Senator LAUSCHE. I would like to put into the record a copy of Senator Dodd's speech describing how this meeting in New York, on the phase sponsored by the Committee for a Sane Nuclear Policy but organized by Communists, was conducted.

The CHAIRMAN. Without objection, so ordered.

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(The speech referred to follows:)

[From the Congressional Record, May 25, 1960, pp. 10234–10237]

THE COMMUNIST INFILTRATION IN THE NUCLEAR TEST BAN MOVEMENT

Mr. DODD. Mr. President, in his statement of January 22, J. Edgar Hoover warned that Nikita Khrushchev's visit to this country had resulted in the reinvigoration of the American Communist movement and that the FBI was receiving increasing evidence of stepped-up Communist activities at many points.

Among other things, Mr. Hoover warned that non-Communist organizations dedicated to causes that command popular support could expect Communist efforts to infiltrate their ranks.

Evidence that has come into the hands of the Subcommittee on Internal Security indicates that the Communist Party has made the nuclear test ban movement the chief target of its infiltration operations. I think it important that this evidence be placed before Congress and before the public so that we may have a better understanding of the methods by which the Communists operate and of the goals they seek to achieve. I should like to detail to you some of the evidence of this infiltration, and to suggest the outline of a self-defense program for all organizations whose purposes make them particularly vulnerable to Communist infiltration.

I do not accept the thesis that if one happens to hold a position that enjoys the support of the Communist Party on any issue, one is, ipso facto, either a pro-Communist or a fellow traveler. The Communists are opposed to the poll tax: does that make all people who oppose the poll tax Communists? The Communists support the Forand bill. Does that make the many millions of Americans who have endorsed the bill Communist sympathizers? Obviously not. But on a foreign policy issue of overriding importance like the test ban, if a legitimate organization adheres to a policy which coincides with Communist policy, then it must be prepared to expect a concerted effort at infiltration by the Communist termites. The more urgent the issue, the more respectable the organization, the more illustrious the names on its letterhead, the greater the temptation from the Communist standpoint.

The Committee for a Sane Nuclear Policy is headed by a group of nationally prominent citizens about whose integrity and good faith there is no question. Among them are people like Norman Cousins, of the Saturday Review, Mr. Clarence Pickett of the American Friends Service Committee, Mr. Norman Thomas, and so forth. They advocate a point of view which some of us consider unrealistic or utopian, but it is, nevertheless, a significant point of view on an issue of life and death importance. For the personal motivations of most of those associated with the Committee for a Sane Nuclear Policy I have the most sincere respect. The point of view they represent deserves a hearing—indeed, it must be heard.

Last Thursday evening, May 19, the Committee for a Sane Nuclear Policy held a rally at Madison Square Garden in New York City. Many eminent persons attended this rally. The speakers included Mrs. Eleanor Roosevelt, Mr. Alfred Landon, Mr. Walter Reuther, Gov. G. Mennen Williams, of Michigan, and Dr. Harold Taylor, former President of Sarah Lawrence College. At this meeting, the speakers urged that another summit meeting be convened for the purpose of attempting to arrive at an agreement banning nuclear tests.

Because I esteem the sincerity of the original founders of the Committee for a Sane Nuclear Policy and the sincerity of the speakers I have named, it was for me an unpleasant duty to have to notify them that the unpublicized chief organizer of the Madison Square Garden rally, Henry Alroms, was a veteran member of the Communist Party; that there was also evidence of serious Communist infiltration at chapter level throughout the Committee for a Sane Nuclear Policy; that the Communist Party and its front organizations had done their utmost to promote the meeting; that the Communists provided much of the organizing machinery for the meeting because they planned to use it as a pressure instrument in support of Soviet nuclear diplomacy.

This information was confirmed by the Subcommittee on Internal Security only several days before the Madison Square Garden meeting was scheduled to take place. Because I wished to be fair to all the decent and prominent people who were associated with the meeting as sponsors or as speakers, I had some doubt about the advisability of rushing into print with my information only

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48 hours in advance of the rally. Instead, I decided to communicate the information, or at least certain essential portions of it, to Mr. Norman Cousins, the chairman of the Committee for a Sane Nuclear Policy. Mr. Cousins came to Washington to see me and we had a long and frank discussion about the problem.

The directors of the Committee for a Sane Nuclear Policy, it turned out, had some inkling of the existence of a Communist infiltration and were extremely unhappy about it. When the Communist affiliations of the chief organizer of the Madison Square Garden meeting were brought to Mr. Cousins' attention, he immediately suspended the organizer in question. This was 2 days before the meeting. It is my understanding that the national committee of the organization intends to take some further measures against Communist infiltrators.

If I have any criticism to make, it is that the directors of the organization have moved so slowly to confront the problem and that the measures they have taken have been inadequate. I was, for example, surprised to discover that one of the officers of the committee, Mr. Norman Thomas, had, as early as last January, expressed serious suspicion about the individual who later became organizer of the Madison Square Garden meeting—but that no action had been taken on Mr. Thomas' warning.

To me it is appalling that the Communists should be able to infiltrate and manipulate a movement founded on sincere humanitarian and pacifist motivations, and headed by so many reputable citizens. Perhaps this is a situation in which remedial legislation is indicated, a situation in which private citizens must have the assistance of Government to cope effectively with a movement that operates by stealth and by secrecy.

In accordance with the subcommittee's mandate from the Senate, it was clear that our duty required that we do everything in our power to get at the facts. In presenting the information we have gleaned to the Senate, it is my hope that I will be able to do so in a manner that will avoid injury to the innocent and will point the way to a constructive course of action by Government and private organizations.

The test ban has for several years now been the chief objective of the Communist propaganda apparatus. Of this there is ample documentary evidence.

In his speech before the congress of the Soviet Communist Party on January 27, Nikita Khrushchev, in his most militant rhetoric, called for a permanent ban on nuclear tests.

The main political resolution adopted by the 17th congress of the Communist Party of the U.S.A., in February 1960 said:

"The demand that the administration end nuclear testing and ban the H-bomb has found a widening response in community meetings, peace talks, petitions, and sermons from the pulpit."

On February 16, 1960, seven Communists foreign language newspapers took a full-page advertisement in the New York Times and called on the President—

"1. To proclaim the achievement of total, universal, and controlled disarmament as the goal of National U.S. policy.

"2. To restore the moratorium on the testing of nuclear weapons and to do everything in your power to insure early agreement on the banning of all nuclear tests.

"3. To oppose the sharing of nuclear warheads with NATO allies."

The Committee for a Sane Nuclear Policy has not solicited the praise of the Communist movement, and most of its leaders, I am certain, would be much happier if they received no plaudits from Communist sources. The fact, nevertheless, remains that the committee in recent years has been the recipient of consistent and generous praise from the Communist press. The Communist organ, New World Review, for April of this year, for example, carried these paragraphs under the caption "Peace Groups in the United States":

"No amount of conspiratorial silence can wipe out the forces for disarmament and peace; but it can leave them isolated from each other and ignorant of the efforts their fellows are making.

"It is our purpose to bring to our readers' attention the main groups in our country working toward these ends, beginning in this issue * * * with a description of the main nonsectarian national organization.

"NATIONAL COMMITTEE FOR A SANE NUCLEAR POLICY

"SANE offers a wide choice of channels for expression of the American people's desire for a world without war. Under the co-chairmanship of Norman

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Cousins, editor of the Saturday Review, and Clarence Pickett, executive secretary emeritus of the American Friends Service Committee, and with the sponsorship and support of many noted Americans, SANE provides an elastic organization and comprehensive program through which ordinary people can be effective.

"Local committees of SANE exist in many cities, towns, counties, and small communities throughout the United States. Their membership policy is flexible and they generally welcome additions to their forces, whether for one particular campaign or on a long-term basis."

Mr. President, to anyone who is familiar with the language of communism, the paragraphs I have just quoted constitute a clear directive to members of the Communist Party to enter into the ranks of the Committee for a Sane Nuclear Policy. These paragraphs, I might point out, were not the haphazard product of a novice or intellectual dilettante. They were written by the editor of the magazine, Jessica Smith, a hardened oldtime Communist.

As for the Madison Square Garden meeting, the Communist organ, the Worker, in a series of its own advertisements, called upon all the Communists faithful to turn out in strength. The masthead of the Worker for May 15 carried a banner headline "For Sanity in Foreign Policy—All Out to Madison Square Garden, Thursday, 7:45 p.m."

Given this background, it was only natural to anticipate that the Communists would attempt to find their way into the organizing mechanism of the meeting.

The name of the Communist Party member who served as chief organizer of the Madison Square Garden meeting is Henry H. Abrams. As I have pointed out, Mr. Norman Cousins suspended Mr. Abrams several days before the meeting, when I brought the matter to his attention. Until the date of his suspension, however, Mr. Abrams devoted virtually full time to the organization of the meeting for many weeks. He did so, moreover, without remuneration.

On March 16, 1960, Mr. Abrams attended a meeting of the executive committee of the Greater New York committee of the National Committee for a Sane Nuclear Policy. Let me read just two sentences from the minutes of that meeting, which clearly illustrates the central role this Communist agent has played:

"Dr. Lear reported that Gov. G. Mennen Williams has accepted our invitation to speak at Madison Square Garden. Henry Abrams then gave the rest of the Madison Square Garden report."

Henry Abrams' residence at 11 Riverside Drive, New York City, and his telephone number of Trafalgar 4–7769, is the address and telephone number used by the headquarters of the Upper Manhattan Sane Nuclear Policy Committee. Abrams has served as an accountant for both the Upper Manhattan Committee and the Greater New York Committee of the National Committee for a Sane Nuclear Policy. From these facts it emerges that his association with the Committee for a Sane Nuclear Policy was a long and fairly prominent one.

Now let us look at Henry Abrams' Communist record.

In 1939, he resided at 972 East 14th Street, Brooklyn, N.Y. In that year he signed a Communist Party nominating petition from that address which appeared on page 4091 of the election records.

He was a member of the 11th Assembly District Club of the Communist Party which met at 2744 Broadway, New York City. On Tuesday, February 15, 1944, it was announced at a meeting of this Communist club that Henry Abrams would give a class for Communists on the preparation of income tax forms.

Henry Abrams was a member of the Young Communist League and later of the upper West Side section of the Communist Party of New York City. He has been a consistent financial contributor to the Communist Party, U.S.A.

As recently as September 28, 1958, the official Communist Party newspaper, the Worker, printed a letter from Henry Abrams endorsing the candidacy of Benjamin Davis for State senator in the 21st senatorial district of New York City. Benjamin Davis is national secretary of the Communist Party, and is, in fact, one of the most notorious of native Communists, a fact which is well known to most Americans. He was one of the leading members of the party convicted in the famous Foley Square Smith Act trials of a dozen years ago. He spent several years in jail for advocating the overthrow of the U.S. Government by force and violence.

Mr. Abrams has served as an accountant for the American Communist Party, for the Emergency Civil Liberties Committee, and for the late Congressman Vito Marcantonio.

Abrams has carried out Communist policies in many ostensibly non-Communist organizations which have, in fact, served as fronts for the Communist

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Party. Among the organizations promoted by the Communists in which he has played an active role are the Emergency Civil Liberties Committee, the American Committee for the Protection of the Foreign Born, the Hiroshima Commemorative Committee, the National Committee of the American Forum for Socialist Education, the American Labor Party, the United Independent Socialist Conference Committee.

I state all these things as facts, Mr. President. On Friday, May 13, Henry Abrams was given the opportunity to deny them in a hearing of the Senate Subcommittee on Internal Security. He invoked the fifth amendment in reply to all questions regarding his years' long record of service to the Communist conspiracy.

The obvious and declared purpose of the Madison Square Garden meeting was to influence American policy on the nuclear test ban. It is one thing when American citizens come together, in accordance with their rights, for the purpose of urging a specific policy on their Government. It is an altogether different thing when such a meeting is infiltrated by the Communists and when the chief organizing role falls into the hands of a member of the Communist Party, which, as we all know, is a quisling instrument of Soviet policy. Such a situation has an important bearing on American security, because it is axiomatic that all actions of the Communist Party are planned to subserve the ends of Soviet diplomacy.

Let me say here, parenthetically, that this is by no means the only occasion of Communist machinations in the field of nuclear policy. At a previous hearing, we established that Avrahm G. Mezerik, a man with a long Communist record, actually managed a so-called American Nobel Anniversary Forum and Dinner, held at the Waldorf-Astoria Hotel in New York City on January 11, 1958, which concentrated on the theme of an American ban on nuclear testing. It was brought out in this hearing that this gathering while managed by a Communist, was financed by a prominent American capitalist, who was unaware of Mezerik's Communist record.

With all this interest in the subject, the Internal Security Subcommittee summoned Mr. Abrams to appear and testify. Through his attorney, Leonard Boudin, of New York, Mr. Abrams pleaded illness, and asked to be excused from coming to Washington to testify. We then arranged to hear him in New York City. He showed up with a doctor's certificate that he was suffering from heart disease, and moved a further continuance on the ground that his condition was so serious that being questioned might cause him serious harm. Since the committee was aware that Mr. Abrams had continued right up to that day to carry a heavy load as the man in active charge of arrangements for the May 19 meeting at Madison Square Garden, we were not impressed by these claims.

We had a New York City Public Health Service doctor present, and asked Mr. Abrams if he would consent to be examined then and there. He refused, so we denied the request for a continuance and went ahead with the hearing, which was in executive session.

As I have indicated the hearing had been called in the hope that we could learn from Mr. Abrams the full story of Communist infiltration of and participation in this movement for a nuclear test ban, as a basis for determining what, if any, legislation may be indicated in this area.

The subcommittee has received evidence, much of it still of a classified nature, that Henry Abrams is not a lone infiltrator, that there exists in fact a serious Communist infiltration in the Committee for a Sane Nuclear Policy.

What, specifically, are the Communists attempting to achieve by their infiltration of the test ban movement, including their recent all-out support of the Madison Square Garden meeting? The answer to this is, I believe, obvious.

The Communist purpose in supporting the test ban agitation and in going all out to make the Madison Square Garden meeting a success is to exert pressure on the administration to make still further concessions to the Soviet viewpoint in order to arrive at a test ban agreement; to create a climate of public opinion which will make it impossible for the administration to resume small underground tests, even though there may be every reason to believe that the Kremlin is conducting such tests; to enervate the free world so that it becomes incapable of responding with appropriate measures to challenges at Berlin and at other points.

In the test ban negotiations that are now going on there are major differences between the Soviet position and our own. These differences hinge around the question of inspection. In my own opinion, we have already conceded too

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much, especially by agreeing in principle to a further voluntary moratorium on undetectable underground tests. But for those tests that are subject to detection, we still take the stand that here should be an inspection system based on an adequate number of fixed stations, with at least 20 or 30 onsite inspections per annum. The Kremlin wants a minimum of inspection. It wants as few stations as possible, and its spokesmen have indicated that they would not be willing to accept more than a few onsite inspections per annum.

The Kremlin apparently attached major importance to the Madison Square Garden meeting as a pressure operation in support of its nuclear objectives. This, I believe, is conclusively demonstrated by the generous and sympathetic coverage of the meeting in the Soviet press. I think this is interesting. According to an AP dispatch of May 21st, Pravda headlined its account of the meeting with the words "We Want To Live in Friendship With the Soviet Union," while the Izvestia headline read "Rebuff to Advocates of War."

I believe that the heads of the Committee for a Sane Nuclear Policy have a serious contribution to make to the great debate on national policy. But they can only make this contribution effectively if they purge their ranks ruthlessly of Communist infiltration and if they clearly demarcate their own position from that of the Communists, first, by stressing the need for adequate inspection, second, by reiterating at every opportunity their opposition to the tyranny of communism

On the basis of the evidence that has come to me, I do not believe that the Committee for a Sane Nuclear Policy has taken the necessary measures to create a climate that is inhospitable to Communist infiltration. At the Madison Square Garden rally, for example, there was much direct and inferential criticism of American policy, but, according to the press accounts and reports from private sources—persons who were present at the meeting—there was almost no criticism of Khrushchev or of his arrogant, insulting, gutter-level behavior in Paris. On the contrary, the speakers called for an immediate effort to renew the summit conference.

Let me digress briefly for a comment on this last proposal, which has, unfortunately, not been confined to the Committee for a Sane Nuclear Policy. Perhaps I am old-fashioned, but to me it seems that after the President of the United States has had to endure a barrage of the crudest insults ever leveled at a head of state, a petition to Khrushchev for another summit meeting would constitute a total abandonment of national dignity. The only conceivable political consequences of so craven an action would be to encourage Khrushchev to further arrogance and further demands.

As I have said, I have found no serious evidence that the Madison Square Garden meeting was organized and conducted in a manner which would have discouraged Communist participation. It was not surprising, therefore, that the Communists and their sympathizers turned out in force. Although no Gallup poll or breakdown was possible, I am convinced from reports that the Communists were responsible for a very substantial percentage of the overflow turnout. A number of well-known Communists, including Alexander Trachtenberg, a top party member, were observed in the audience. Outside the meeting, the Communists brazenly distributed literature in their own name.

If decent organizations like the Committee for a Sane Nuclear Policy wish to protect themselves against the danger of Communist infiltration, I cannot emphasize too strongly the need for an organizational climate that is openly inhospitable to Communists. This is a situation where a tepid declaration of devotion to democracy simply will not suffice, while a neutral silence is an open invitation to disaster.

I can think of other things that can and should be done by the directors of the Committee for a Sane Nuclear Policy and of other non-Communist organizations which must contend with the problem of Communist infiltration. At top level, control is relatively easy. One can more or less assume that the people who are elected to a board of directors or to a national committee have enjoyed public visibility over a period of years so that their records are known. At the local level, not even the FBI with all of its resources could offer a 100 percent guarantee against infiltration. However, I think it is possible for organizations to exercise a good deal of control by carefully examining the personal records and bona fides, first, of all those who volunteer to help establish local organizations; second, of those who are elected to office in local organizations; third, of all those assigned to organizing activities.

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If any effort had been made to do these things, the Madison Square Garden situation might have been avoided. But for 25 years, Henry Abrams has been a Communist. Without looking up his record, the Committee for a Sane Nuclear Policy allowed him to become the chief organizer of the rally in New York City. That was not taking the necessary precautionary measures.

I think it is not too much to ask that all such committees, which are headed by good people and made up of thousands of good people, ought to give consideration to the question whether Communists like Abrams are taking a part in the running of their meetings. Many of these committees have been doing good work. But it is little wonder that they become infiltrated by Communists if they do not take the pains and the time to ascertain who some of their people are, before they allow them to become officers or chief organizers of mass rallies.

I believe it is not too much to ask our fellow citizens who are organizing committees for the purpose of exerting influence on Congress—as they have every right to do—to make a preliminary, cursory check of the persons who are working in their organizations, especially before they hold such meetings.

This would not be an easy task. But there is much that can be done. It will not always be possible to obtain accurate personal information, because many Communists operate underground as secret party members. But in the case of a man like Abrams, who has a public record of membership, the facts should be available without too much effort.

Perhaps this is a situation in which private organizations can in some way be assisted by Government. This is a problem that the Subcommittee on Internal Security is at present exploring.

Mr. President, in closing my remarks, I wish to pay my personal tribute to Mr. Norman Cousins, the chairman of the Committee for a Sane Nuclear Policy, for the manner in which he has reacted to the revelations of the subcommittee. Mr. Cousins has been a neighbor and a friend of mine for many years. I have the highest regard for him. That is why I called him up and told him what I knew about Abrams. He was good enough to come to Washington to see me.

I said, "I don't want to release this material 24 hours before your meeting. You have your plans all made. But many innocent people will be present, and a number of them will be prominent people. Why haven't you checked on people like Abrams? Norman Thomas said in January that he was doubtful about the man's background. Here it is the middle of May, on the eve of your meeting, and you have not yet done anything."

Mr. Cousins was upset about the matter. He immediately suspended Abrams. Not only did he do this, but he told me he was glad we had informed him about Abrams. He offered to open the books of his organization to the subcommittee and to cooperate in every way to rid his organization of Communists.

I assure Mr. Cousins and other persons connected with his committee that the Subcommittee on Internal Security is ready to cooperate with them to help to prevent a repetition of the Madison Square Garden situation.

I think it is not too much to say that the subcommittee is desirous and willing to help any other organization to avoid infiltration by subterranean elements who are not there for any good purpose, and who are certainly not interested, as are the good people who make up the bulk of their membership, in the welfare of the United States.

I yield the floor.

(Whereupon, at 1:10 p.m., the committee adjourned.)

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APPENDIXES

APPENDIX I

BACKGROUND DOCUMENTS ON EVENTS INCIDENT TO THE SUMMIT CONFERENCE

1. PREMIER KHRUSHCHEV'S REMARKS ON U.S. PLANE

[From the New York Times, May 6, 1960]

LONDON, *May 5 (Reuters)—Following, in translation, are excerpts from the section of Premier Khrushchev's address today referring to the shooting down of a United States plane Sunday, as broadcast from Moscow:*

On instructions of the Soviet Government, I am duty bound to report to you on aggressive acts directed in the last few weeks by the United States of America against the Soviet Union.

What form did these aggressive acts take? The United States sent its planes, which violated our state frontier and intruded into the airspace of the Soviet Union.

Its last but one aggressive act was perpetrated by the United States of America on April 9, 1960.

A United States plane intruded into the airspace of our country from the Afghanistan side. Of course, no man in his right senses can think and assume that this violation was done by Afghanistan, a country which is friendly with us.

We are convinced that this plane belonged to the United States of America and obviously was based somewhere on the territory of Turkey, Iran or Pakistan, which are linked with the U.S.A. by obligations under the aggressive CENTO bloc.

[Mr. Khrushchev said the Soviet Government decided against making a protest but ordered military commanders to act if another plane intruded.]

American military men apparently liked this impunity as it happened on April 9, and they decided to repeat the aggressive act.

INCIDENT ON MAY DAY

Selected for this was the most festive day for our people and the workers of the world—the day of May the First—the international holiday of fraternal solidarity of the working class.

That day, early in the morning, at 0536 hours, Moscow time, an American plane flew over our frontier and continued its flight into the interior of the Soviet land. A report on this aggressive act was immediately given to the Government by the Minister of Defense.

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The Government had stated this: Since he realizes what he comes up against when intruding into a foreign territory, if he gets away with it he will attempt fresh provocations. Therefore, the plane must be shot down.

This task was fulfilled and the plane was shot down.

According to first information, it has transpired that the plane belongs to the United States of America although it bears no identification signs.

Now an expert commission is studying data that fell in our hands. It has been established that this plane that crossed the state frontier of the Soviet Union was coming either from Turkey, Iran or Pakistan.

After the study of all materials that are now at our disposal, the Soviet Government will lodge with the United States of America a strong protest and will warn it that if similar aggressive acts against our country continue, we reserve the right to respond to them with measures we shall find necessary in order to insure the safety of our country.

We shall also give the most serious warning to those countries that put their territories at the disposal of the United States of America for aggressive acts directed against our country.

The following conclusion comes to mind: Aggressive imperialist forces in the United States in recent times have been taking the most active measures to undermine the summit or at least to hinder any agreement that might be reached.

"WHO SENT THIS AIRCRAFT?"

The question then arises: Who sent this aircraft across the Soviet frontier? Was it the man who is Commander in Chief of the American armed forces who, as everyone knows, is the President? Or was this aggressive act carried out by Pentagon militarists? If such actions are taken by American military men on their own account, it must be of especial concern to world opinion.

Perhaps it was a result of the friendship that is now forming between the United States and Franco that the American militarists decided to act independently, as did the Spanish military junta, which rose up against the legal Spanish Government.

Thus, in the so-called free world, military dictators not seldom set up their regimes using the methods of Franco. But the peoples are beginning to understand where true freedom is and where there is tyranny.

Take, for instance, the events in South Korea. The head of the puppet Syngman Rhee regime, the best friend of the United States and the father of his country as someone or other called him in America, has now been overthrown by the people and is now a political corpse. And it was not the Communists who were behind these events; even American politicial leaders have had to admit.

The sufferings of the Korean people led them to rise up against the bestial yoke, and the peoples understand that it was not only a question of Syngman Rhee himself who was to blame but all those who supported him and hung him round the necks of the South Koreans.

It is no coincidence that the free world sees so many popular demonstrations demanding freedom.

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Comrade Deputies, the impression is being formed that the aggressive actions newly undertaken by the United States against the Soviet Union are a foretaste of the summit meeting.

Are they taken in order to exert pressure on us and to attempt to frighten us with their military superiority in order to undermine our determination to work for easing tension, to eliminate the cold war and to put an end to the arms race?

All these missions are sent in order to prevent any agreement on vexing questions, for we cannot say that this aircraft was a harbinger of peace, that it was on a goodwill mission. No, it was a real bandit flight with aggressive intentions.

We can say to those gentlemen who sent the aircraft that if they think they can bend our knees and our backs by means of such pressure, this will have no effect on us. The Soviet Union has every means to give a rebuff to those who want to exert pressure in order to achieve a solution convenient to aggressors.

In the name of the Soviet Government let me express thanks to the men of the military units who carried out with honor the task laid on them in defending the frontiers of our motherland.

Comrades, the Soviet people and Government have always expressed their peaceful intentions and friendly feelings toward the United States, but in answer to this we have black ingratitude.

"FEELINGS OF INDIGNATION"

It is understood that this has aroused feelings of indignation against the activities of the American military men. But we must control this feeling and must be ruled not by our emotions, but by reason.

Government leaders interested in preserving peace must soberly consider the consequences of such actions and think what they might lead to.

Hitler's aircraft before the war used to intrude into our airspace. The Soviet Government would protest, but Hitler refused to pay attention and then attacked us. And where did that all end?

How do we assess the incursion of American aircraft—as a precursor of war or a foreshadow of attack, of the repetition of what Hitler did? The Soviet Government thinks that all the same there is no reason to draw such conclusions.

There is another relationship of power in the world, and in this the people's will to peace plays a great part and this is why we do not conclude that this is a prewar trial of strength or a reconnaissance made to try our nerves, preserve the atmosphere of the cold war so that the imperialists can continue to bind their people with taxation, to carry on the arms race, and to keep their people in a state of fear of war and to continue to impose their will.

The Soviet Union has no aggressive intentions, we do not want the cold war, we want disarmament and our proposals made to the United Nations on this subject remain in force still. Once again, we repeat that disarmament is the right way to preserve peace and in such conditions no country would be able unilaterally to arm and attack another. The Soviet Government once again calls on the Government of the United States to end the cold war. All states must act peaceably so that calm, peace and happiness can prevail.

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2. DEFENSE DEPARTMENT NEWS RELEASE, MAY 5, 1960

[No. 509–60]

For the Press:

The U.S. Air Force confirmed on May 3, 1960, that a NASA U–2 aircraft is missing in Turkey. It was on a weather mission originating at Adana, Turkey. Purpose was a study of clear air turbulence. During the flight in SE Turkey the pilot reported oxygen difficulty. Last word heard at 9 a.m. 1st of May, Turkish time (3 a.m. 1 May e.d.t.) over emergency frequency. U–2 aircraft did not land at Adana as planned and could only be assumed down. A search effort is underway in Lake Van area.

The missing U–2 is a National Aeronautics and Space Administration aircraft. The pilot is an employee of Lockheed Aircraft Corp., under contract to NASA.

The U–2 program was initiated in 1955 to perform high altitude weather research.

The flight was a joint NASA/AF Air Weather Service Mission.

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3. EXCERPTS FROM TRANSCRIPT OF DEPARTMENT OF STATE PRESS AND RADIO NEWS BRIEFING, MAY 5, 1960

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Mr. WHITE. Now, the Department has been informed by NASA that as announced May 3 an unarmed plane, a U–2 weather research plane based at Adana, Turkey, piloted by a civilian has been missing since May 1. During the flight of this plane, the pilot reported difficulty with his oxygen equipment. Mr. Khrushchev has announced that a U.S. plane has been shot down over the U.S.S.R. on that date. It may be that this was the missing plane. It is entirely possible that having a failure in the oxygen equipment, which could result in the pilot losing consciousness, the plane continued on automatic pilot for a considerable distance and accidentally violated Soviet airspace. The United States is taking this matter up with the Soviet Government, with particular reference to the fate of the pilot.

That is the end of the statement.

Q. What was the plane doing, weather reconnaissance?

A. NASA is briefing reporters on the full details of that.

Q. When you say you are taking this matter up with the Soviet Government, do you mean you are asking for information on the pilot, or making a protest about the plane?

A. This matter is being taken up with the Soviet Government, John (Hightower), through our Ambassador in Moscow.

Q. Yes, but it is a protest or an inquiry?

A. I can't say just what form it will take at this stage, I would think, initially, an inquiry.

Q. Is this the report which the White House announced would be made?

A. That is correct.

Q. You say it may be that this was the missing plane?

A. Yes.

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Q. There are other planes missing or——
A. Not that I am aware of.
Q. Unaccounted for?
A. No, not that I am aware of.
Q. You say this plane was from Adana, Turkey. Is that the U.S. Air Force Base down there?
A. As I say, you better get this information from NASA. (See NASA Press Release No. 60–193.)
Q. Khrushchev also said an American plane violated the Soviet frontier by flying over the Afghan border on April 9. Do you have anything on that?
A. We have absolutely no—N-O—information on that at all.
Q. Wasn't this plane accompanied by another plane of the same type when it started out on the reconnaissance flight?
A. I am not aware of that, if that is a fact, but I assume NASA can give you that information, Paul (Ward). I have nothing on it.
Q. Link, the area where this plane disappeared is the same as the other plane——
A. This is the Lake Van area.
Q. Is that the same area where the earlier plane disappeared in 1958?
A. In the neighborhood of it.
Q. Link, how do you know the plane was having difficulty?
A. He reported it.
Q. He reported it by radio?
A. That is right.
Q. At the time did he give his position?
A. In the Lake Van area.
Q. Was his course such at that time that if continued it might have taken him over the Soviet Union?
A. John (Hightower), I don't have those details.
Q. Was that the last communication from him, Link?
A. So far as I know.
Q. What was the question?
A. The question was, was that the last communication from the pilot, and to my knowledge it was.
Q. Is the the name of this pilot being released by somebody?
A. Here I would like to go off the record. * * *
Q. Link, has any protest been received from the Soviet Government?
A. No, sir, it has not.
Q. Link, do you have any comment on the rest of Khrushchev's speech, his statement that the Summit looks gloomy now because of his aggressive American action?
A. No.
Q. Is this the first indication we had in Khrushchev's speech that the plane had been shot down? There was no previous communication from the Soviets?
A. Nothing prior to this.
Q. Thank you, very much.
A. Yes, sir.

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4. NATIONAL AERONAUTICS AND SPACE ADMINISTRATION NEWS RELEASE, MAY 5, 1960

[NASA Release No. 60–193]

Memo to the Press:

One of NASA's U–2 research airplanes, in use since 1956 in a continuing program to study gust-meteorological conditions found at high altitude, has been missing since about 9 o'clock Sunday morning (local time), when its pilot reported he was having oxygen difficulties over the Lake Van, Turkey, area.

The airplane had taken off from Incirlik Air Base, Turkey. The flight plan called for the first check point to be at 37 degrees, 25 minutes, North: 41 degrees, 23 minutes, East, and for a left turn to be made to the Lake Van beacon, thence to the Trabazon beacon, thence to Antalya, and return to Adana. The flight scheduled was estimated at 3 hours, 45 minutes, for a total of 1,400 nautical miles. Takeoff was at 8 a.m. local time.

(The above-given times are the equivalent of 3 a.m. Sunday, and 2 a.m., eastern daylight time.)

About 1 hour after takeoff, the pilot reported difficulties with his oxygen equipment. Using emergency radio frequency, he reported he was heading for the Lake Van beacon to get his bearings, and that he would return to Adana.

As indicated above, his flight plan called for him to make a left turn at the Lake Van beacon. His last report indicated he was attempting to receive that beacon. It is believed he probably was on a northeasterly course, but there was no further word.

An aerial search was begun soon after receipt of the last communication. The Lake Van area is mountainous and very rugged. No evidence has been sighted of the aircraft having crashed.

If the pilot continued to suffer lack of oxygen, the path of the airplane from the last reported position would be impossible to determine. If the airplane was on automatic pilot, it is likely it would have continued along its northeasterly course.

The pilot, as are all pilots used on NASA's program of upper atmosphere research with the U–2 airplane, is a civilian employed by the Lockheed Aircraft Corp., builders of the airplane.

When the research program was begun in 1956 by the National Advisory Committee for Aeronautics (predecessor to NASA), the Federal agency did not have a sufficient number of pilots to operate the program, and so a contract was made with Lockheed to provide the pilots.

Overseas logistic support for NASA's continuing use of the U–2 is provided by Air Weather Service units of the USAF.

NASA has procured a total of 10 U–2 airplanes. The airplane was originally built as a private venture by Lockheed to serve as a "flying test bed." It is powered by a single Pratt & Whitney J–57 turbojet engine, and can maintain flight for as long as 4 hours at altitudes of up to 55,000 feet.

Since inception of the research program in 1956, the U–2 flying weather laboratories have operated from bases in California, New York, Alaska, England, Germany, Turkey, Pakistan, Japan, Okinawa, and the Philippines.

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The U–2 airplanes are presently being used in California (Edwards AFB, one), Japan (Atsugi, three) and Turkey (Adana, four).

The instrumentation carried by the U–2 permits obtaining more precise information about clear air turbulence, convective clouds, wind shear, the jet stream, and such widespread weather patterns as typhoons. The airplane also has been used by NASA to obtain information about cosmic rays, and the concentration of certain elements in the atmosphere, including ozone and water vapor.

Instrumentation carried includes: Angular velocity recorder, to measure the airplane's rate of pitch; modified VGH recorder, to measure and record head-on gust components in flight; flight recorder Model BB, continuous recorder of indicated airspeed, pressure altitude and normal acceleration; airspeed and altitude transducer to measure pressure altitude and indicated airspeed; temperature and humidity measuring set AN/AMQ 7, to measure indicated free air temperature and indicated relative humidity; and vortex thermometer system, to measure true free-air temperature within one-half degree centigrade at high speeds.

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5. DEPARTMENT OF STATE PRESS RELEASE, MAY 6, 1960

[No. 249]

The following is the text of a note delivered today by the American Embassy at Moscow to the Soviet Ministry of Foreign Affairs:

The Embassy of the United States of America by instruction of its Government has the honor to state the following:

The United States Government has noted the statement of the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics, N. S. Khrushchev, in his speech before the Supreme Soviet on May 5 that a foreign aircraft crossed the border of the Soviet Union on May 1 and that on orders of the Soviet Government, this aircraft was shot down. In this same statement it was said that investigation showed that it was a United States plane.

As already announced on May 3, a United States National Aeronautical Space Agency unarmed weather research plane based at Adana, Turkey, and piloted by a civilian American has been missing since May 1. The name of the American civilian pilot is Francis Gary Powers, born on August 17, 1929, at Jenkins, Kentucky.

In the light of the above the United States Government requests the Soviet Government to provide it with full facts of the Soviet investigation of this incident and to inform it of the fate of the pilot.

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6. EXCERPTS FROM PREMIER KHRUSHCHEV'S REMARKS ON U.S. PLANE INCIDENT, MAY 7, 1960

[From the New York Times, May 8, 1960]

Following are excerpts from the concluding speech to the meeting of the Supreme Soviet in Moscow yesterday by Premier Khrushchev, as provided in English in New York by Tass, the official Soviet press agency:

The aggressive act committed by the American Air Force against the Soviet Union has justifiably incensed the Deputies and all the

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Soviet people. Numerous inquiries and appeals are being received by the session and the Soviet Government. In view of this permit me to dwell on this question once again and to furnish certain new data.

After my report to the Supreme Soviet, in which I dwelt on this fact, the United States Department of State claimed in an official press statement that the point in question was a violation of the Soviet State Frontier by an American aircraft of the "Lockheed U-2" type, which allegedly was studying weather conditions in the upper layers of the atmosphere in the area of the Turkish-Soviet frontier.

This plane had allegedly strayed off its course because the pilot had oxygen trouble. The State Department asserts that the pilot lost consciousness and, steered by its automatic pilot, the plane flew into Soviet territory. According to the Department of State, the pilot only had time to report back about the failure of his oxygen equipment to the Turkish airdrome in Adana, whence it flew, an airdrome which allegedly does not belong to the military but to the National Aeronautics and Space Research Administration.

Soon after that, the National Aeronautics and Space Research Administration issued a statement with a view to confirming the State Department's version.

"MANY SILLY THINGS"

Comrades, I must tell you a secret. When I was making my report I deliberately did not say that the pilot was alive and in good health and that we have got parts of the plane. We did so deliberately because had we told everything at once, the Americans would have invented another version.

And now, just look how many silly things they have said—Van Lake, scientific research and so on and so forth. Now that they know that the pilot is alive they will have to invent something else and they will do it.

[Mr. Khrushchev read from the United States statement issued after his first announcement; it was printed in the New York Times last Friday.]

These are the official versions put into circulation by American officials to mislead the public opinion of their country and the world.

I must declare, comrade Deputies, that these versions are completely untrue and calculated for gullible people.

The authors of these versions supposed that if the plane was shot down, the pilot most probably perished too. So there will be nobody to ask how everything actually happened, there will be no way to check what sort of plane it was and what instruments it carried.

"ALIVE AND IN GOOD HEALTH"

First of all, I wish to announce that the pilot of the shot-down American plane is alive and in good health. He is now in Moscow. Brought here also are the remains of this plane and its special instrumentation, discovered during the investigation.

The name of this pilot is Francis Gary Powers. He is 30 years old. He says he is a first lieutenant of the United States Air Force, where he served till 1956, that is, to the day when he went over to the Central Intelligence Agency.

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Francis Powers reported, incidentally, that while serving with the American Air Force he used to get $700 a month, but when he went over to the intelligence service and started carrying out spying assignments to glean secret information, he began getting $2,500 a month. That is how capital buys lives, buys people. The flier testified that he had no dizziness, nor had his oxygen apparatus failed. He was flying along the assigned course, accurately executing his chief's orders, switching on and off the equipment over the preselected targets for gleaning intelligence on the Soviet Union's military and industrial establishments, and flew on until the very moment his piratical flight into this country's interior was cut short.

I want to tell something about the results of the examination of the plane that has been shot down and its equipment, as well as of the questioning of the pilot. The inquiry still continues, but the picture is fairly clear already.

PLANE TYPE CONFIRMED

To start with, this was, indeed, a high-altitude, low-speed "Lockheed U–2." They banked on its high altitude and believed that this plane cannot be brought down by any fighter or antiaircraft artillery. That is why they thought it could fly over Soviet territory with immunity. In fact, the plane flew at a great altitude and it was hit by the rocket at an altitude of 20,000 meters [65,000 feet]. And if they fly higher, we will also hit them! The plane was in no way equipped for "upper atmosphere research" or for taking "air samples," as official American spokesmen assert.

Not at all. This was a real military reconnaissance aircraft fitted with various instruments for collecting intelligence and, among other things, for aerial photography.

The competent commission of experts, which examined the wrecked plane, has established from the documentary evidence that this American plane is a specially prepared reconnaissance aircraft. The task of the plane was to cross the entire territory of the Soviet Union from the Pamirs to the Kola Peninsula to get information on our country's military and industrial establishments by means of aerial photography. Besides aerial cameras the plane carried other reconnaissance equipment for spotting radar networks, identifying the location and frequencies of operating radio stations and other special radio engineering equipment.

Not only do we have the equipment of that plane, but we also have the developed film showing a number of areas of our territory. Here are some of these photos. Here are photos of these airfields. Here are two white lines. They are lines of our fighters. Here is another airfield and also planes on it. All these films we developed ourselves.

CAMERA IS PRAISED

Here are photos of petrol stores. It must be said that the camera is not a bad one and the photo is very accurate.

But I must say that our cameras take better pictures, are more accurate, so that we gained little in this respect.

These photos here show industrial enterprises.

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There is also a tape recording of the signals of a number of our ground radar stations. These are incontestible evidence of the spying done by the American plane shot down in the vicinity of Sverdlovsk. That is what "air samples" American reconnaissance took, and it took them not over Van Lake in Turkey but quite elsewhere.

The only thing that is true is that this plane was stationed at the American-Turkish air base at Incirlik east of Adana. As Powers, the flier, testified, he was serving with the 10-10 unit, which, for the sake of disguise, is under control of the National Aeronautics and Space Administration, but in reality, conducts high-altitude military reconnaissance.

In his depositions, Powers mentioned the names of several officers he had served with at the American military base in Turkey. According to Powers' testimony, the commander of the American 10-10 unit is Col. William Shelton and his deputy is Lieut. Col. Carol Funk.

Before his flight, Powers had long trained himself for flying into the depth of this country and, as he said himself, he had flown along the Soviet frontier many times in order to study the radar system of the Soviet Union.

"POWERS, THE SCOUT"

On April 27, Powers, the scout, flew over from the Turkish city of Adana to the Peshawar airfield in Pakistan on orders from his superiors. And it was, therefore, from Pakistan's territory, that is, from the Peshawar airfield—and not from the Turkish airfield outside Adana, as stated in the United States State Department's version—that Powers took off on May 1 with instruction to fly along the course indicated on his map over the Aral Sea, Sverdlovsk and other points and reach Archangel and Murmansk, before landing at the Bude airfield in Norway.

Now we can say where he was flying to. I must admit that we knew it already when I was reporting this fact. We did not say anything at that time in order to see what the Americans would invent. Now that they have made their invention, we report how everything actually happened.

This is what Powers said when questioned about the task of his flight over Soviet territory.

"I was to take off from the Peshawar airfield in Pakistan, cross the national frontier of the U.S.S.R. and fly across Soviet territory to Norway. I was to fly over certain points of the U.S.S.R., of which I remember Murmansk and Archangel. During my flight over Soviet territory I was to switch on and off the equipment over certain points indicated on the map. I believe my flight over Soviet territory was meant for collecting information on Soviet guided missiles and radar stations."

I want to ask the gentlemen from the State Department: Is it such "air samples over Lake Van" that the spy flier Powers was to take?

IRAQI REVOLT RECALLED

I say nothing of the fact that by flying along this course, the American scout plane grossly violated the national sovereignty of Afghan-

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istan by having flown across that country's territory without permission. But there is, perhaps, nothing extraordinary in this for the morals of American militarists. Such actions of theirs have long been known.

Suffice it to recall the flight of American military aircraft over the territory of Austria, when the aggression was being prepared against Iraq, where a revolution had just taken place. The Austrian Government protested against the treacherous violation of Austria's sovereignty by American military aircraft and against that blatant act of disrespect for her neutrality sealed by the signatures of the United States, among others.

If one believes the version that the pilot lost consciousness owing to oxygen trouble and that the aircraft was subsequently controlled by the automatic pilot, one must also believe that the aircraft controlled by an automatic pilot flew from Turkey to Pakistan, touched down at Peshewar Airport, stayed there three days, took off early in the morning of May 1, flew over the territory of Afghanistan, crossed the Soviet frontier, flew more than 2,000 kilometers over our territory for a total of some four hours.

All the time of the flight over our territory the aircraft was under observation and was brought down as soon as the order was received.

When our anti-aircraft rocket battery intercepted and brought down the plane, the pilot, it must be believed, soon regained his consciousness because he bailed out by parachute; you just note he was not ejected by the automatic device but left through the upper canopy designed for emplaning. The question arises why did he do this if there are devices for rapid ejection?

He did this possibly because there was an explosive charge in the aircraft which was to have blown up the plane as soon as the pilot was ejected. The pilot knew this and possibly was afraid that he would be killed in the explosion. Clever enough!

"NOT THE ONLY PRECAUTION"

But the installation of the infernal machine was not the only precaution taken. To cover up the tracks of the crime the pilot was told that he must not fall alive in the hands of the Soviet authorities. For this reason he was supplied with a special pin. He was to have pricked himself with this poisoned pin, resulting in instantaneous death.

What a barbarism! Here is this instrument—the latest achievement of American technology for the killing of their own people (a photograph is produced).

But everything alive wants to live and when the plane was brought down the pilot bailed out by parachute. And when he landed he did not follow the advice of those who sent him on his anti-Soviet predatory assignment but remained alive.

It is alleged that the flight was made for scientific purposes to investigate the upper layers of the atmosphere. The question arises why the pilot then had to be armed with a noiseless pistol. He was given it for some emergency, not to take air samples but to blow people's brains out. All this we shall present to the public as material evidence. This is what, so to say, such Christians are like.

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He was given this pistol after making low bows as they do in churches. And yet they call us godless atheists. Yet we have never committed such crimes against humanity and never will. If the pilot was given a pistol to defend himself against wild beasts in case of a forced landing, the question arises, why a pistol with a silencer? This also shows what so-called scientific purposes were pursued by the plane.

The pilot who was supposed to explore the atmosphere was given 7,500 rubles in Soviet currency. The question arises, when and where was he to have spent them and for what purposes, for he did not fly to exchange old rubles for new?

GOLD FRANCS, GOLD RINGS

The pilot was also given French gold francs. I have seen these gold francs with my own eyes. And you can see them here in the photograph. They are covered with cellophane on both sides of the coins. Done in a cultured, American way. But what did the pilot need these francs for? He also had West German, Italian, and other currency. Besides his own watch he was also given for his trip another two gold watches and seven gold rings for ladies. Why was all this necessary in the upper layers of the atmosphere? Or, maybe, the pilot was to have flown still higher to Mars and was going to lead astray Martian ladies?

You see how thoroughly American pilots are equipped before setting off on a flight to take samples of air in the upper layers of the atmosphere. Thus, no concocted version can save the reputation of those who bear the responsibility for this perfidious act.

Thus, no concocted version can save the reputation of those who bear the responsibility for this perfidious action. They were caught red-handed as organizers of the incursion in the airspace of the Soviet Union not long before the meeting of the heads of government in Paris, not long before the visit to the Soviet Union of the President of the United States. I believe that this is a bad preparation for serious talks on easing international tension.

I am now reading in the Western press comments on these events and there are some people who accuse us, Khrushchev, of wanting to undermine the summit meeting because otherwise he would not have presented this fact at the session of the Supreme Soviet but raised it through some other channels but what did you expect, gentlemen? You are accustomed to make mischief and some people regard this as all but a good thing and keep silent. No, we are not such kind of people: if you made mischief bear the responsibility for this openly.

WHY SUCH A "RECKLESS STEP"

They live according to the law; if one is rich, one will not be imprisoned. This is true for the capitalist because he always can buy himself off. But there is another country, the country of socialism, where law protects the state, protects society, protects everyone living in this state.

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What could be the reason for such a reckless step? This was evidently done because someone in the United States was obsessed by the idea of intelligence. The United States proposal on the "open sky" is well known. We rejected this proposal and the American military then decided to "open" the Soviet sky by themselves.

But there are rules of international laws, there are national frontiers and no one has the right to disregard these laws and to cross the frontiers of other countries.

From the lofty rostrum of the Supreme Soviet we warn once again those countries that make their territory available for the take-off of planes with anti-Soviet intentions—do not play with fire, gentlemen!

The governments of the three countries—Turkey, Pakistan and Norway—must be clearly aware that they were accomplices of this flight because they permitted the use of their airfields against the Soviet Union.

7. STATEMENT BY THE DEPARTMENT OF STATE, MAY 7, 1960

[From The New York Times, May 8, 1960]

WASHINGTON, *May 7.—Following is the statement on the U–2 plane incident issued by the State Department today after clearance by President Eisenhower:*

The Department has received the text of Mr. Khrushchev's further remarks about the unarmed plane which is reported to have been shot down in the Soviet Union. As previously announced, it was known that a U–2 plane was missing. As a result of the inquiry ordered by the President, it has been established that insofar as the authorities are concerned, there was no authorization for any such flights as described by Mr. Khrushchev.

Nevertheless, it appears that in endeavoring to obtain information now concealed behind the Iron Curtain a flight over Soviet territory was probably undertaken by an unarmed civilian U–2 plane.

It is certainly no secret that, given the state of the world today, intelligence collection activities are practiced by all countries and postwar history certainly reveals that the Soviet Union has not been lagging behind in the field. The necessity for such activities as measures for legitimate national defense is enhanced by the excessive secrecy practiced by the Soviet Union in contrast to the free world.

One of the things creating tension in the world today is apprehension over surprise attack with weapons of mass destruction. To reduce mutual suspicion and to get a measure of protection against surprise attack, the United States in 1955 offered its "open skies" proposal—a proposal which was rejected out of hand by the Soviet Union. It is in relation to the danger of surprise attack that planes of the type of the unarmed civilian U–2 aircraft have made flights along the frontiers of the free world for the past four years.

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8. TEXT OF PREMIER KHRUSHCHEV'S SPEECH WARNING NATIONS WITH BASES USED BY U.S. PLANES

[From the New York Times, May 10, 1960]

Following is the text of remarks by Premier Khrushchev at a reception in the Czechoslovak Embassy in Moscow yesterday, as provided in English in New York by Tass, the official press agency:

Dear Comrade Dvorak, Ambassador of friendly, fraternal Czechoslovakia!

Dear friends, comrades, gentlemen!

We are very pleased to attend the reception held on the occasion of the fifteenth anniversary of the liberation of the Czechoslovak Republic, the celebration of Victory Day, which indeed is a holiday for all the peoples. The Soviet people, at one with all other peoples, sincerely want that there should be no more war, that this war should be the last, that it should be remembered by the peoples and should go down in history as the last war.

We are doing our utmost to achieve this indeed. That is precisely why the Soviet Union submitted at the United Nations its proposals for general and complete disarmament. We not only insist on the necessity of reducing armed forces but already now, without waiting for such decisions by the Western countries, we unilaterally cut the armed forces of the Soviet Union by one-third.

When we have reduced our armed forces to 2,400,000, some time will pass, and we shall think it over and evidently we shall further reduce our Army. Comrade Zhadov [Gen. Aleksandr A. Zhadov, deputy commander of Soviet ground forces] over there scratched the back of his head—another reduction.

No, this will not be done now, Comrade General, but later.

We shall do this if the situation favors such measures. Of course, we shall not cut our armed forces to such a level which would prejudice the security of the Soviet Union. You should bear in mind that we do not reduce our armed forces for financial reasons. No, the financial situation of our state is splendid and, if need be, could not only forbear from reducing the army and navy, but increase them. I repeat, if this were necessary we could do this without tense efforts. But as good masters we say: Why have bigger armed forces than we need?

CONTROLS NOT FEARED

If our partners agree we are willing to accept total disarmament and we shall effect it honestly. We are not afraid of control. If you please, gentlemen, then you could fly over our territory, check, take pictures, do what you please.

Such an issue as now could not arise then. The Department of State explains the incident with the downed reconnaissance plane more or less as follows: One cannot, they say, admit, nor can one deny. It turns out, as in the well-known joke, that here is a maiden who is also not a maiden for she has a child! The marriage was not registered, therefore one can regard her as a maiden in a way. But she gave birth, to a child. Can one regard her as a maiden or not?

This does not happen in real life. We tell the Americans: Your plane flew over our country on an intelligence mission. We tracked its

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flight and it flew to the Sverdlovsk area, where it was brought down. That is how you got into a mess and you are in a mess. Pluck up your courage and say: Yes, there was such a disgraceful fact. And this is a big disgrace for America since everyone sees now how disgraced in the eyes of the world are those who committeed such a shocking act of aggression. The whole world wants peace, a relaxation of international tension while certain quarters in the United States stage such a provocation.

What were the purposes of this flight? A provocation! This is bad, very bad indeed!

TIMING FOR SUMMIT SEEN

I have already said, comrades, and now I repeat, that this was done deliberately and deliberately timed for the summit meeting in Paris. It is said that it was the work of the military. Only the military? What kind of state is this if the military do what the Government opposes? How can the Government tolerate this? If anyone of our military allowed himself to do such a thing, we would pull him up immediately. The Government and the country are strong when the entire machinery functions smoothly, when everything is subordinated to the Government. Therein lies real strength. Understand me rightly: When everyone pulls in a different direction what kind of state is this and what confidence can one have in the policy of such a state?

There can be no confidence in the policy of such a state! The statement that the aggressive flight was made without the will and instructions of the Government, that nothing was known of it in the State Department, does not give credit to the Department of State of the United States. And what about Allen Dulles?

For he knew about all this and he also is a member of the United States Government! For this is Allen Dulles' aviation! It turns out that the State Department's reply is, as the saying has it, too thin.

It is possible, I do not know this for certain, but I do not preclude the possibility that the Government of the United States of America knew of this flight. But I, so to speak, confide it to you!

STATEMENT HELD ALARMING

In diplomatic language it would be better to say: It knew, but it stopped its ears and closed its eyes and now depicts the matter as if the devil led astray some official. However, let it be, with this Government and with its way of issuing statements on all this.

One thing is alarming in this statement. It is vague. More, this statement blames us for not allowing to fly over or travel across our country those who want to study our defenses, to discover secrets. And that is why they, that means the American Government, had been impelled to send planes on intelligence missions. This is a very dangerous explanation. It is dangerous because it does not denounce but tries to justify such a flight and seems to say that such flights are possible in the future, too, because the Soviet Union does not think to reveal its secrets to countries that pursue unfriendly policy toward us.

Using this as the only justification, some gentlemen intend to gain the right in the eyes of public opinion to fly over our territory in the future, too, gleaning important military secrets.

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I repeat once again this is very dangerous, let alone that it is wrong in principle and not in keeping with the spirit of international peaceful relations. If someone intends to fly over our territory, reconnoitering objectives and gleaning state secrets, we shall bring down such planes, just bring them down!

More, if such flights are repeated, we shall take appropriate countermeasures.

OTHER COUNTRIES WARNED

I should say this: Those countries that have bases on their territories should note most carefully the following: If they allow others to fly from their bases to our territory we shall hit at those bases. Because we assess such actions as provocations against our country!

We tell the Governments of those countries, if you leased your territory to others and are not the masters of your land, of your country, hence, we shall have to understand it in our way. Those who lease your territory, operate against us from your territory. Their lands are far from us while your land is near. That is why as a warning to remote targets, we shall find the range to the near ones. Let them draw the appropriate conclusions.

I should not like to heat up passions because even in wartime people long for peace, await an end to the war and dream of peace. There is no war now. Our strength is being tested. Therefore, let us not draw conclusions aggravating relations between countries, such conclusions as would hamper us in the future, I should like to say, even in building good relations with the United States of America. Today I declare once again that we want to live not only in peace but also in friendship with the American people. The American people want no war. I am sure of this.

On the eve of the Paris meeting the aggressive circles wanted to bring strong pressure to bear upon us. We say: Let us conclude a peace treaty with Germany. Some of our former wartime allies are against this.

WEST BERLIN STAND DECRIED

But why? Plainly speaking, why need the United States of America, France and the United Kingdom West Berlin? They need it as a dog needs a fifth leg. West Berlin does not give them anything. By the way, no one encroaches on West Berlin. It is said, freedom is at stake, but who encroaches on freedom?

Let the West Berliners continue to live as they do now and let them have the regime they like. The Soviet Government has long since declared that to select a regime is a matter for each people and that everyone should live as he prefers to. If the Western powers do not want to sign a German peace treaty we shall have to sign a peace treaty with the German Democratic Republic.

The point is that even after we conclude such a treaty with the German Democratic Republic they would like to exercise those rights which flow from Germany's surrender, to exercise them in defiance of the peace treaty we would have signed. But if we sign a peace treaty with the German Democratic Republic, the terms of war will be ended and, hence, the terms of surrender will also be ended. They will cease to operate. If after the signing of a peace treaty some one would

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like to force his way into West Berlin which we would like to see a free city, our force will resist this force.

Aware of this, some leaders in the United States of America decided to teach Khrushchev a lesson. Since it is said that force will resist force, we shall teach a lesson to the Soviet Union, we shall fly over your territory and we already flew over it and returned home.

EARLIER FLYOVER NOTED

This happened, for instance, on April 9. I have already spoken of this. Even now this flight is denied in the United States. In this case the ethics is: If the thief is not caught, he is no thief. But this time we caught the thief and now the whole world knows of it.

The reconnaissance plane should have been brought down on April 9, too. But our military, to put it mildly, let a chance slip by. And we, as one says, took them to task for it. On May 1 the reconnaissance plane was shot down. The military splendidly coped with the task when the opponent grew bold. For the American military thought like this: If the April 9 flight passed off with impunity, that means they cannot hit it at such an altitude, and the aggressive military wanted to demonstrate their strength once again fifteen days before the summit meeting.

Well, Khrushchev, what are you boasting of? We fly over your country and you can do nothing about it. They expected to fly over over Soviet territory this time, too, to fly over Sverdlovsk and to show that we can do nothing about it. Indeed, an unpleasant situation! And now when he hit the air pirate with a rocket, as the saying has it, it is time to dismount from the horse!

S. M. Budenny: One must slash down to the saddle, and everything will go to pieces.

Nikita Khrushchev: I believe that this cavalry rule is quite appropriate!

Attempts are still made to frighten us because in the West bombers are flying on round-the-clock vigil * * *.

ROCKETS ON VIGIL

I should like to tell those people: Listen, gentlemen, we also have bombers, but they are not on vigil, in our country rockets are on vigil!

It is common knowledge that V bombers, as a rule, fly at an altitude ranging from 12,000 to 17,000 meters, they cannot rise higher because designers still cannot overcome technical difficulties. The plane which committed the diversion on May 1 flew at an altitude of 20,000 meters. They say it was an unarmed V plane. It was because it was unarmed that it could fly at such an altitude. They expected that such a plane will be invulnerable for a long time to go. They even expected that this will be almost for all time.

I shall say further, when Twining, the then Chief of Staff of the United States Air Force, arrived here we welcomed him as guest and entertained him. He left our country by air and next day sent a plane flying at great altitude to our country. This plane flew as far as Kiev. The question arose: Should we protest? I proposed that no protest should be lodged. Only an animal might act like Twining which, eating at one place, might do its unpleasant business there.

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From such behavior we drew the conclusion: To improve rockets, to improve fighters. Our fighters can fly as high as 28,000 meters. But the difficulties of a fighter are that though it can rise high, it is not so easy and simple to find the target in the air; a plane in the air is like a needle in the ocean.

But the rocket finds its targets itself. This is the advantage of the rocket and we use of it. We have both fighters and rockets. That is why I say: If there are still politicians who would like to rely on bombers, they are doomed to failure. With the up-to-date military techniques bombers will be shot down even before they approach the target. We also have good aviation. I flew to America in a TU–114. This plane is a modification of a bomber with a flying range of 17,000 kilometers. I mentioned this to the President of the United States. However, the ceiling of the bomber is within the sphere of operation of fighters. It is now not so difficult to bring down a bomber.

The Americans can do this, but we can do it even better.

That is why one should abandon this exchange of threats. It would be better to speak of peace and friendship, how mutually advantageous it is to trade, how good relations can be established between peoples, how cultural contacts and tourist travel can be developed. This would be a far more useful and lofty job and all the peoples of the world would welcome this. This is precisely what our stand is, comrades! The peoples demand tranquillity, they are against wars and military conflicts. Let us try and meet these just demands of the people.

SOVIET GOALS CITED

When we were preparing the recent session of the Supreme Soviet we did not envisage the discussion of any military questions. We drafted a law on the abolition of taxes paid by factory and office workers and a law on the completion of the transition to a seven and six-hour working day. We prepared for discussion at the session the question of increasing by 25,000,000,000 to 30,000,000,000 rubles expenditures for the expansion of industry manufacturing consumer goods so as to emerge to first place in Europe during this seven-year-plan period and to catch up with the United States five years later. What lofty aims from the attainment of which not a single people, not a single individual in the world, would suffer!

And here, as one says, to "cheer us up," they timed such an aggressive act for the great proletarian May Day holiday! But the aggressors themselves did not expect that they would indeed cheer us up. When Marshal Malinovsky mounted the mausoleum on May Day to make his speech, I could already congratulate him on the shooting down of the plane. He replied that he had learned this just before motoring to Red Square. This was good news before the minister's speech at the May Day parade.

Comrades, today we are celebrating the day of victory in the war in which we lost more people and wealth than any other country. We mourn over the dead but at the same time we celebrate and rejoice in our victory.

HAILS WAR VICTORY

We rejoice because our people not only rehabilitated the devastated economy but far surpassed the pre-war level of development. This

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victory is also being celebrated in countries that were our allies in the last war. The Ambassadors of those countries are also here. We have just clinked glasses with the American Ambassador, Mr. Thompson. But after our "clinking" in the air, are ringing of our glasses in the Czechoslovak Embassy—is already not the proper ringing.

I respect the Ambassador of the United States and I am convinced that he had nothing to do with this incursion, that he could not have anything to do even if he wished to.

I am convinced of the ethical qualities of this man. Since I know him I think that he is not capable of such a thing. Evidently he feels this incident as a big annoyance for his country and for himself as the representative of the United States in the Soviet Union. This must be taken into consideration.

Comrades! I propose a toast to the victory, to the nations and peoples who fought against Nazi Germany and with us won a great victory!

I propose a toast to friendly Czechoslovakia, to the remarkable people of Czechoslovakia, to the hosts of this house, the Ambassador of the Czechoslovak Republic, Comrade Dvorak, and his wife, to all who represent the fraternal Czechoslovak Republic in the Soviet Union!

I raise my glass to the end of wars, to the end of provocations, to peace and friendship between the peoples.

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9. STATEMENT BY THE SECRETARY OF STATE MAY 9, 1960

[Department of State press release No. 254]

On May 7 the Department of State spokesman made a statement with respect to the alleged shooting down of an unarmed American civilian aircraft of the U–2 type over the Soviet Union. The following supplements and clarifies this statement as respects the position of the United States Government.

Ever since Marshal Stalin shifted the policy of the Soviet Union from wartime cooperation to postwar conflict in 1946 and particularly since the Berlin blockade, the forceful takeover of Czechoslovakia and the Communist aggressions in Korea and Vietnam the world has lived in a state of apprehension with respect to Soviet intentions. The Soviet leaders have almost complete access to the open societies of the free world and supplement this with vast espionage networks. However, they keep their own society tightly closed and rigorously controlled. With the development of modern weapons carrying tremendously destructive nuclear warheads, the threat of surprise attack and aggression presents a constant danger. This menace is enhanced by the threats of mass destruction frequently voiced by the Soviet leadership.

For many years the United States in company with its allies has sought to lessen or even to eliminate this threat from the life of man so that he can go about his peaceful business without fear. Many proposals to this end have been put up to the Soviet Union. The Presi-

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dent's "open skies" proposal of 1955 was followed in 1957 by the offer of an exchange of ground observers between agreed military installations in the U.S., the U.S.S.R. and other nations that might wish to participate. For several years we have been seeking the mutual abolition of the restrictions on travel imposed by the Soviet Union and those which the United States felt obliged to institute on a reciprocal basis. More recently at the Geneva disarmament conference the United States has proposed far-reaching new measures of controlled disarmament. It is possible that the Soviet leaders have a different version and that, however unjustifiedly, they fear attack from the West. But this is hard to reconcile with their continual rejection of our repeated proposals for effective measures against surprise attack and for effective inspection of disarmament measures.

I will say frankly that it is unacceptable that the Soviet political system should be given an opportunity to make secret preparations to face the free world with the choice of abject surrender or nuclear destruction. The Government of the United States would be derelict to its responsibility not only to the American people but to free peoples everywhere if it did not, in the absence of Soviet cooperation, take such measures as are possible unilaterally to lessen and to overcome this danger of surprise attack. In fact the United States has not and does not shirk this responsibility.

In accordance with the National Security Act of 1947, the President has put into effect since the beginning of his Administration directives to gather by every possible means the information required to protect the United States and the Free World against surprise attack and to enable them to make effective preparations for their defense. Under these directives programs have been developed and put into operation which have included extensive aerial surveillance by unarmed civilian aircraft, normally of a peripheral character but on occasion by penetration. Specific missions of these unarmed civilian aircraft have not been subject to Presidential authorization. The fact that such surveillance was taking place has apparently not been a secret to the Soviet leadership and the question indeed arises as to why at this particular juncture they should seek to exploit the present incident as a propaganda battle in the cold war.

This government had sincerely hoped and continues to hope that in the coming meeting of the Heads of Government in Paris Chairman Khrushchev would be prepared to cooperate in agreeing to effective measures which would remove this fear of sudden mass destruction from the minds of peoples everywhere. Far from being damaging to the forthcoming meeting in Paris, this incident should serve to underline the importance to the world of an earnest attempt there to achieve agreed and effective safeguards against surprise attack and aggression.

At my request and with the authority of the President, the Director of the Central Intelligence Agency, the Honorable Allen W. Dulles, is today briefing Members of the Congress fully along the foregoing lines.

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10. TEXT OF SOVIET UNION NOTE TO THE UNITED STATES GOVERNMENT, MAY 10, 1960

[From the New York Times, May 11, 1960]

Moscow, May 10 (AP)—Following is the text of a Soviet note today to the United States on the downing of an American plane, as translated by the United States Embassy.

The Government of the Union of Soviet Socialist Republics considers it necessary to state the following to the Government of the United States of America:

On May 1 of this year at 5 hours 36 minutes (5:36 A.M.), Moscow time, a military aircraft violated the boundaries of the U.S.S.R. and intruded across the borders of the Soviet Union for a distance of more than 2,000 kilometers (1,240 miles). The Government of the U.S.S.R. naturally could not leave unpunished such a flagrant violation of the Soviet state boundaries. When the intentions of the violating aircraft became apparent, it was shot down by Soviet rocket troops in the area of Sverdlovsk.

Upon examination by experts of all data at the disposal of the Soviet side, it was incontrovertibly established that the intruder aircraft belonged to the United States of America, was permanently based in Turkey and was sent through Pakistan into the Soviet Union with hostile purposes.

SOVIET CITES EVIDENCE

As the Chairman of the U.S.S.R. Council of Ministers, N. S. Khrushchev, made public on May 7 at the final session of the U.S.S.R. Supreme Soviet, data from the investigation leave no doubt with respect to the purposes of the flight of the American aircraft which violated the U.S.S.R.'s border on May 1. This aircraft was especially equipped for a reconnaissance and diversionary flight over the territory of the Soviet Union. It had on board apparatus for aerial photography, for detecting the Soviet radar network and other special radio-technical equipment which formed part of the U.S.S.R. anti-aircraft defenses. At the disposal of the Soviet expert commission, which carried out the investigation, there is undisputable proof of the espionage reconnaissance mission of the American aircraft; films of Soviet defense and industrial establishments, a tape recording of the signals of Soviet radar stations and other data.

The pilot [Francis G.] Powers, about whose fate the Embassy of the U.S.A. inquired in its note of May 6, is alive and, as indicated in the afore-mentioned speech of the Chairman of the U.S.S.R. Council of Ministers, N. S. Khrushchev, will be brought to account under the laws of the Soviet state. The pilot has indicated that he did everything in full accordance with the assignment given him. On the flight map taken from him there was clearly and accurately marked the entire route he was assigned after take-off from Adana [Turkey]; Peshawar [Pakistan]-Aral-Sverdlovsk-Archangel-Murmansk, followed by a landing at the Norwegian airfield at Bodo.

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PILOT'S UNIT IDENTIFIED

The pilot has also stated that he served in sub-unit No. 10–10, which under cover of the National Aeronautics and Space Administration is engaged in high-altitude military reconnaissance.

This and other information revealed in the speeches of the head of the Soviet Government completely refuted the United States State Department's concocted and hurriedly fabricated version, released May 5 in an official announcement for the press, to the effect that the aircraft was allegedly carrying out meteorological observations in the upper strata of the atmosphere along the Turkish-Soviet border.

After the complete absurdity of the afore mentioned version had been shown and it had been incontrovertibly proved that the American aircraft intruded across the borders of the Soviet Union for aggressive reconnaissance purposes, a new announcement was made by the United States State Department on May 8 [Moscow time] which contained the forced admission that the aircraft was sent into the Soviet Union for military reconnaissance purposes and, by that very fact, it was admitted that the flight was pursuing aggressive purposes.

In this way after three days the State Department already had denied the version which obviously had been intended to mislead world public opinion as well as the public opinion of America itself.

"OPEN SKIES" ISSUE NOTED

The State Department considered it appropriate to refer in this announcement to the "open skies" proposal made by the Government of the U. S. A. in 1955 and to the refusal of the Soviet Government to accept this proposal. Yet, the Soviet Government, like the governments of many other states, refused to accept this proposal which was intended to throw open the doors of other nations to American reconnaissance. The activities of American aviation only confirm the correctness of the evaluation given to this proposal at the time by the Soviet Government.

Does all this mean that, with the refusal of a number of states to accept this proposal for "open skies" the U. S. A. is attempting arbitrarily to take upon itself the right to "open" a foreign sky?

It is enough to put the question this way, for the complete groundlessness of the afore-mentioned reference to the U. S. A. "open sky" proposal to become clear.

It follows from the aforementioned May 8 announcement from the United States State Department that hostile acts by American aviation, which have taken place numerous times in relation to the Soviet Union, are not simply a result of the activity of the military commands of the U. S. A. in various areas but are an expression of a calculated U. S. A. policy. What the Soviet Government has repeatedly declared in its representations to the Government of the U. S. A. in connection with the violations of the U. S. S. R. national boundaries by American airplanes has been confirmed, namely, that these violations are premeditated.

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U. S. POLICY DISCUSSED

All this testifies that the Government of the U. S. A., instead of taking measures to stop such action by American aviation, the danger of which has more than once been pointed out by the Soviet Government, officially announces such actions as its national policy.

Thus, the Government of the U.S.A., in the first place, testifies to the fact that its answers to representations of the Soviet Government were only for the sake of form, behind which was a concealed effort to avoid the substance of the issue, and that all violations by American aircraft of national boundaries of the U.S.S.R. represented actions conforming to U.S.A. policy.

In the second place, and this is the main point, by sanctioning such actions of American aviation, the Government of the U.S.A. aggravates the situation even more.

One must ask, how is it possible to reconcile this with declarations on the part of leading figures of the U.S.A. that the Government of the U.S.A., like the Soviet Government, is also striving for improvement of relations between the U.S.S.R. and the U.S.A., for a relaxation of international tension, and the strengthening of trust between states.

Military intelligence activities by one nation by means of intrusion of its aircraft into the area of another country can hardly be called a method for improving relations and strengthening trust.

It is self-evident that the Soviet Government is compelled under such circumstances to give strict instructions to its armed forces to take all necessary measures against the violation of Soviet boundaries by foreign aviation.

VIEWS SAID TO DIFFER

The Government of the U.S.S.R. regretfully states that, while it undertakes everything possible for the normalization and improvement of the international situation, the Government of the U.S.A. follows a different path.

It is impossible to exclude the thought that, apparently, the two governments view differently the necessity of improving relations between our countries and for the creation of favorable ground for the forthcoming summit meeting.

The Soviet Government, as well as all the Soviet peoples, considers that personal meeting and discussions of the President of the U.S.A. and other official figures with the Chairman of the Council of Ministers of the U.S.S.R. during his visit in the U.S.A. made a good beginning in the cause of normalizing Soviet-American relations and therefore an improvement of the entire international situation as well.

However, the latest actions of the American authorities apparently seek to return the state of American-Soviet relations to the worst time of the "cold war" and to poison the international situation before the summit meeting.

The Government of the U.S.S.R. cannot avoid pointing out that the State Department's statement which is unprecedented in its cynicism, not only justifies provocative flights of the armed forces of the U.S.A. but also acknowledges that such actions are a "normal phenomenon" and this in fact states that in future the United States

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intends to continue provocative invasions into the confines of the air space of the Soviet Union for the purpose of intelligence.

U.S. CONTRADICTION SEEN

Thus the Government of the U.S.S.R. concludes that the announcement that the flight was carried out without the knowledge and permission of the Government of the U.S.A. does not correspond to reality because in the very same announcement the necessity for carrying on intelligence activities against the Soviet Union is justified. This means that espionage activities of American aircraft are carried on with the sanction of the Government of the U.S.A.

The Government of the Soviet Union makes an emphatic protest to the Government of the U.S.A. in connection with the aggressive acts of American aviation and warns that, if similar provocations are repeated, it will be obliged to take retaliatory measures, the responsibility for the consequences of which will rest on the Government of the state committing aggression against other countries.

The Soviet Government would sincerely like to hope that the Government of the U.S.A. recognized in the final analysis that the interests of preserving and strengthening peace among people, including the interest of the American people itself, whose starving for peace was well demonstrated during the visit of the head of the Soviet Government, N. S. Khrushchev, to the U.S.A., will be served by the cessation of the aforementioned dangerous provocative activities against the U.S.S.R., by cessation of the "cold war," and by research through joint efforts with the Soviet Union and other interested states for a solution of unsettled international problems on a mutually acceptable basis, which is awaited by all people.

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11. TRANSCRIPT OF PRESIDENT EISENHOWER'S NEWS CONFERENCE, MAY 11, 1960 [EXCERPTS]

[From the New York Times, May 12, 1960]

Washington, May 11 (UPI)—Following is the transcript of President Eisenhower's news conference today:

PRESIDENT EISENHOWER. Good morning. Please sit down.

I have made some notes from which I want to talk to you about this U-2 incident.

A full statement about this matter has been made by the State Department and there have been several statesmanlike remarks by leaders of both parties.

For my part, I supplement what the Secretary of State has had to say, with the following four main points. After that I shall have nothing further to say—for the simple reason I can think of nothing to add that might be useful at this time.

The first point is this: The need for intelligence-gathering activities. No one wants another Pearl Harbor. This means that we must have knowledge of military forces and preparations around the world, especially those capable of massive surprise attack.

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Secrecy in the Soviet Union makes this essential. In most of the world no large-scale attack could be prepared in secret, but in the Soviet Union there is a fetish of secrecy and concealment. This is a major cause of international tension and uneasiness today. Our deterrent must never be placed in jeopardy. The safety of the whole free world demands this.

As the Secretary of State pointed out in his recent statement, ever since the beginning of my Administration I have issued directives to gather, in every feasible way, the information required to protect the United States and the free world against surprise attack and to enable them to make effective preparations for defense.

My second point: The nature of intelligence-gathering activities.

"BELOW THE SURFACE"

These have a special and secret character. They are, so to speak, "below the surface" activities. They are secret because they must circumvent measures designed by other countries to protect secrecy of military preparations.

They are divorced from the regular visible agencies of government which stay clear of operational involvement in specific detailed activities.

These elements operate under broad directives to seek and gather intelligence short of the use of force—with operations supervised by responsible officials within this area of secret activities.

We do not use our Army, Navy or Air Force for this purpose, first to avoid any possibility of the use of force in connection with these activities, and second, because our military forces, for obvious reasons, cannot be given latitude under broad directives, but must be kept under strict control in every detail.

These activities have their own rules and methods of concealment which seek to mislead and obscure—just as in the Soviet allegations there are many discrepancies. For example, there is some reason to believe that the plane in question was not shot down at high altitude. The normal agencies of our Government are unaware of these specific activities or of the special efforts to conceal them.

Third point: How should we view all of this activity?

DISTASTEFUL BUT VITAL

It is a distasteful but vital necessity.

We prefer and work for a different kind of world—and a different way of obtaining the information essential to confidence and effective deterrents. Open societies, in the day of present weapons, are the only answer.

This was the reason for my "open skies" proposal in 1955, which I was ready instantly to put into effect—to permit aerial observation over the United States and the Soviet Union which would assure that no surprise attack was being prepared against anyone. I shall bring up the "open skies" proposal again at Paris—since it is a means of ending concealment and suspicion.

My final point is that we must not be distracted from the real issues of the day by what is an incident or a symptom of the world situation today.

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This incident has been given great propaganda exploitation. The emphasis given to a flight of an unarmed nonmilitary plane can only reflect a fetish of secrecy.

The real issues are the ones we will be working on at the summit—disarmament, search for solutions affecting Germany and Berlin and the whole range of East-West relations, including the reduction of secrecy and suspicion.

Frankly, I am hopeful that we may make progress on these great issues. This is what we mean when we speak of "working for peace."

And as I remind you, I will have nothing further to say about this matter.

1. ROBERT J. DONOVAN of The New York Herald Tribune. Mr. President, since our last visit, or conference, Prime Minister Khrushchev has made some pretty vigorous statements about your plans for bringing Mr. Nixon to the summit in case you had to come home. Do his comments in any way change your intention?

A. No, indeed. And, I should clarify something, there seems to be some misunderstanding; because a friend from Congress, a friend indeed of the other party, told me the other day that he had never heard of the latter part of my press conference on this point where I said if my—if my absence from the conference had to be more than two or three days, I would be right back there, and I believe I remarked, I am not sure, that the jet plane made this kind of a trip possible.

Now, as far as Mr. Khrushchev's statement, this, I can just say this: He has never asked me my opinion of some of his people. [Laughter.]

2. CHARLES H. MOHR of Time magazine. Mr. President, in case, Mr. President, that the Soviet Union should reject your proposal for surprise attack conference, or open skies arrangements, do you think that the development of satellites like Samos and Midas will possibly in the next few years erase our worries on the score of surveillance and also are you doing anything now to speed up those scientific projects?

A. Well, I know of nothing—no, I keep in touch with my Scientific Advisory Committee and operators, and I know of nothing we could do to speed these up. They are research items and as such no one can predict exactly what would be their degree of efficiency. So I couldn't make a real prediction of what is going—how useful they are going to be.

Q. Sir, do you think that their development will ease our worries on the question of secrecy?

A. Well, I say, I just can't predict what the final results will be. Now, we do know this, right now. I believe, it's either Tiros that is sending back constantly pictures on the cloud cover all around the earth, and that is admittedly a rather rough example of what might be done in photography. But this is being done constantly, and I don't know how many thousands of photographs have been taken, and they send them back on command.

3. LAURENCE H. BURD of The Chicago Tribune. Mr. President, last week you used the word "if" in connection with your trip to Russia. Have you changed any plans about that, or think you might?

A. No, not at all. I have no idea, but you can never tell from one day to the other what is happening in this world, it seems, so I just

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said—"if"—and I put it in the positive sense, I think. I expect to go; put it that way.

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5. EDWARD T. FOLLIARD of the Washington Post and Times Herald. Mr. President, do you think the outlook for the summit conference has changed, or has been changed in the last week or so?

A. Not decisively at all, no.

* * * * * * *

11. MERRIMAN SMITH of United Press International. Mr. President, quite aside from your comment about the U–2 plane episode, sir, I wonder if you could give us your reaction to a rather denunciatory speech made this morning, right ahead of the summit meeting, by the Russian Foreign Minister. Mr. Gromyko attributes to this country deeds and efforts which he said amount to dangerous ways of balancing on the brink of war. He says that the United States has deliberately engaged in provocative acts in conjunction with some of our Allies.

Now, with statements like this, do you still maintain a hopeful attitude toward the summit?

A. Well, I'd say yes. I have some hope, because these things have been said for many years, ever since World War II, and there is no real change in this matter.

Now, if we—I wonder how many of you people have read the full text of the Abel trial, the record of the trial of Mr. Abel [Rudolph Abel, convicted Soviet spy.] Well, I think he was sentenced to thirty years. Now, this business of saying that you're doing things that are provocative, why, they had better look at their own record. And I'll tell you this: the United States and none of its Allies that I know of has engaged in nothing that would be considered honestly as provocative. We are looking to our own security and our defense and we have no idea of promoting any kind of conflict or war. This is just, it's absolutely ridiculous and they know it is.

12. HENRY N. TAYLOR of the Scripps-Howard Newspapers. Mr. President, sir, would it be trespassing on your request about the U–2 to ask if you could tell us something about any possible Soviet reconnaissance flights over the Western part of the world, and our response to them, if any?

A. Well, I could just say this: as far as I know, there has never been any over the United States.

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15. CHARLES W. ROBERTS of Newsweek. Sir, in connection with the Abel trial which you mentioned—the Soviet Government in that case made no effort to defend Colonel Abel. I wonder if an American citizen were arrested by a foreign government and brought to trial as a spy, what the policy of this Government would be so far as his defense was concerned?

A. Well, we would certainly offer the good offices of our embassy, and see whether there was anything we could do. Of course, we would have to do it, it would be an internal matter there and we would have to do it with the permission of the other country. So far as I—I think that if there is anything wrong diplomatically with

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my answer, you had better ask the State Department, but I think that would be the result.

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17. MARVIN L. ARROWSMITH of the Associated Press. Mr. President, you have said many times that you wouldn't go to the summit under any threats or ultimatums. Yesterday, as you know, the Soviets in their note threatened retaliation against us if we continued to fly these planes over their territory. Do you regard that kind of threat as within the category you were speaking of? A. No. I think that you have to set that aside in a special category. I don't believe it's the kind of thing that you call an ultimatum at all.

18. EDWARD P. MORGAN of American Broadcasting Co. Mr. President, a point of clarification, Mr. President: Do we infer correctly that your prepared statement this morning is the final, complete and ultimate answer to your critics, friendly and hostile, on the subject?

A. I said that at this time I could see nothing useful more that I could say, so that's where I stand at this moment.

* * * * * * *

20. JOHN SCALI of the Associated Press. Mr. President, you said in your initial statement that the Soviet account of the downing of this plane contained many discrepancies, and that there was reason to doubt that the plane was downed at a high altitude, as Mr. Khrushchev claims.

Can you tell us, sir, whether the Administration at some future time intends to expose these discrepancies, and can you at this time without violating what you have said, give us any more details about how we believe this plane actually came down in the Soviet Union?

A. Well, I don't think I am—you raise a question that is really an auxiliary to the main issue, and so I don't mind saying this: That, take the pictures themselves, we know that they were not, or we believe we know that they are not pictures of the plane that was downed, and there are other things in their statements.

Now, I don't know what's going to happen in the future, but these things you can be sure will be carefully looked into. And, as again I say, I do not foreclose any kind of statement that in the future may be necessary. I am saying that now I can see nothing more useful to say.

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23. RAYMOND P. BRANDT of the St. Louis Post-Dispatch. In view of your emphasis on the—you might go back to the summit if you had to come back here, have you any idea how long the Paris meeting will go on, how long do you think it will take you to get to some agreement?

A. Well, I don't know. But I just want to point this out: I hear that some, and I don't know whether this is all of the others or not, but they do not like the simultaneous translations. Now, let us assume you have called an hour's conference, and one of you, for example, wants to make a, let's say, a ten-minute exposition. When you take seriatum translations, here is already a half hour of an hour's conference gone, and you have had only ten minutes.

Now, these are very slow and laborious things, and consequently the possibility of prophesying how long this thing is going to be is really remote. Now, for my part, I am perfectly ready to work as

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many hours as an individual human can to get this thing along the line, but I am prepared to go to this thing as long as there is any usefulness whatsoever promised, and even if I am called back, and I know I have one date for one twenty-four hours, I am still ready and prepared to go back. And that is what I have been trying to insist, that I am not making my own convenience and my own duties here the decisive thing as to how long this conference will last.

24. LILLIAN LEVY of the National Jewish Post and Opinion.—Mr. President, are any changes in the present borders of West Germany part of the German question to be discussed at the summit? I ask this, sir, because this issue has been raised by a responsible West German leader and member of Adenauer's Cabinet who recently suggested that Germans be allowed to return to Sudetenland.

A. I didn't get the very first clause of your question.

Q. Well, what I asked—were boundaries going to be part of the German question to be raised?

A. Well, at this time we wouldn't raise it. As a matter of fact, they've been living with these boundaries for a long time, and I would see at this moment no possibility of changing them except in methods that would be unacceptable, so, it might be raised by someone but I have no plan to do it.

Mr. ARROWSMITH. Thank you, Mr. President.

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12. ACCOUNT OF PREMIER KHRUSHCHEV'S INFORMAL NEWS CONFERENCE, MAY 11, 1960

[From the New York Times, May 13, 1960]

London, May 12 (Reuters).—Following is an account, issued today by Tass, Soviet press agency, of the informal news conference held yesterday in Moscow by Premier Khrushchev, incorporating a transcript of the questions and his replies:

Following the press conference given by Foreign Minister Andrei Gromyko, Soviet and foreign correspondents were invited to examine the exhibition of the fragments of the downed American plane.

During their visit to the exhibition, the correspondents met Nikita Khrushchev, who, having examined the wreckage of the plane and talked to experts, was preparing to leave. The correspondents surrounded Nikita Khrushchev and a conversation ensued.

The correspondents expressed satisfaction with having been given an opportunity of examining the fragments of the plane and the equipment and special apparatuses it carried.

I see that you are satisfied with the press conference, Nikita Khrushchev said. You must have got the answers to all your questions. I have already said that we intend to take to the Security Council the question of the aggressive intrusion of an American plane within the confines of our country.

If the Security Council—on which, apparently, pressure will be exerted by the United States—does not take the right decision, we shall raise the matter in the United Nations General Assembly.

Such aggressive actions by the United States of America are highly dangerous things.

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This danger is enhanced by the fact that in his statement of May 9, the United States Secretary of State, Mr. Herter, not only sought to justify this act of aggression, but said also that the U.S. Government intended to continue such flights.

"OPEN THREAT TO PEACE"

This is an open threat to peace. We will shoot down such planes, and we will strike at the bases from which these planes will be sent to our country. You understand that if such aggressive actions continue, this might lead to war.

Question. May I ask you a question? one of the correspondents asked Nikita Khrushchev.

Mr. KHRUSHCHEV. Even two if you like.

Q. You have probably noticed a placard among the fragments of the plane urging assistance to the pilot. What do you think its authors meant?

A. We assisted the pilot when he flew into our territory and gave him due welcome. If there are other such invited guests, we shall receive them just as hospitably as this one. We shall try him, try him severely as a spy.

Q. How could all this affect the summit meeting?

A. Let those who sent this spy plane think over this question. Though they should have thought about the consequences beforehand. After all, an aggression has been committed against our country. And we shall continue annihilating all the aggressors who dare raise a hand against us. You see how accurately our rocketeers shot down the plane without setting it on fire! The pilot is alive, the instrumentation intact, in other words the material evidence is here for everyone to see. These are very skillful actions of our rocketeers. We are very grateful to them for this.

EFFECT ON SOVIET PUBLIC

Q. Will this plane incident influence Soviet public opinion when Mr. Eisenhower comes to Moscow?

A. I would not like to be in Mr. Eisenhower's place. I would not like to be asked the questions which might be put to him when he comes to the Soviet Union. I can only say: The Soviet people and our public are very polite, so there will be no excesses, but questions will be asked of course.

I would put it this way: one person, namely, Mr. Herter, has helped the President particularly in this respect.

At his press conference Herter made an outrageous statement! Far from feeling guilty and ashamed of aggressive actions, he justifies them and says that this will continue in the future. Only countries which are in a state of war can act in this way.

We are not in a state of war with America. These aggressive actions and Herter's statement are impudence, sheer impudence!

Herter's statement has made us doubt the correctness of our earlier conclusions that the President, the American Government, did not know about the flights. Herter's statement says that this intelligence plan was endorsed by the Government.

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The Americans, obviously, were compelled to say this because otherwise they would have had to bring Allen Dulles to account. Dulles, in turn, would have exposed the Government by saying that he carried out a plan approved by it and, consequently, endorsed by the head of the Government. I proceed from the statement that was made by Herter.

There was a time—I remember it from my young days—when many criminals and other suspicious elements roamed the world. These people resorted to a following trick:

A bandit with a small boy would hide under a bridge and wait for someone to cross it. Then the bandit would send the boy to the passer-by and the boy would say: Hello, Mister, give me back my watch. The natural answer would be: "What's that? Now run along!" Then the boy would insist: But look, Mister, this watch is mine. Why don't you give me back my watch? Then the armed bandit would appear, as though attracted by the noise of the argument, and tell the passer-by: Why do you bully the boy? Give him back his watch and pass over your coat, too!

The United States wants to live according to this law. But we are not defenseless passers-by. Our country is a strong and mighty state which can try its strength with it. If the United States has not experienced yet a real war on its territory, has not experienced air raids, and if it wishes to unleash a war, we shall be compelled to fire rockets which will explode on the aggressor's territory in the very first minutes of war.

I say this because I have read Herter's statement saying: "We are compelled to fly; it is the fault of the Soviet Union itself, because it does not give us access to its secrets, which we simply must know. This is why, if you please, we undertake such flights. After all, the President has said that the skies should be open—this is why we fly and shall go on flying, shall go on opening the skies."

How can an official representative of a state speak in this way about another nation!

We do not live according to the laws of the United States. We have our own laws and this is why we shall make everyone on our territory respect these laws—and the violators will be thrashed!

I liked the article in the British newspaper Daily Worker, whose meaning was as follows: If we accept the philosophy which some people in the United States want to instill in the public, it will be something like this—it is not the burglar that is guilty, but the owner of the house he broke into, because he locked it, thereby compelling the burglar to break in.

But this is a philosophy of thieves and bandits!

I think that if world public opinion correctly realizes all the gravity of the situation and approaches this aggressive act of the United States policy with due responsibility, if everyone unanimously condemns this act, and if the United States Government no longer uses such methods with regard to other states, this will be a good refreshing, so to say ozonizing, tendency in international relations.

Reading American press reports these days, I see that excepting a few gangsters of the pen who are whitewashing this action, the absolute majority of people writing in the American press, including those

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who are notorious for their past unobjectiveness, are indignant about this incident, regard it as perfidy with regard to the Soviet Union.

It is a good sign. If you, newsmen, inform the public correctly, this incident, as very other incident, will finally be digested. After all, gentlemen, we must live in peace, and not only in peace but also in friendship.

"INCORRIGIBLE OPTIMIST"

Q. Can one remain optimistic about the United States policy?

A. I hold myself to be an incorrigible optimist. I regard the provocative flight of the American intelligence plane over our country not as a preparation for war, but as probing. They have now probed us and we boxed the nose of the "probers."

Some United States officials are making a big noise now. Let them! The Soviet Union is not Guatemala. They cannot send troops here.

We have means to cool down bandits, should they wish to use their brazen methods against us. If they behave in this way, they will get this calmative.

Q. Mr. Khrushchev, has your estimate of President Eisenhower, which you gave upon your return from the United States, changed?

A. Well, the statement issued by the United States Department of State in connection with the intelligence plane naturally alters my belief that the United States President had nothing to do with this affair. I did not know that such an intelligence plan existed in the United States and that it included a program of reconnoitering flights over the Soviet territory.

It follows from the statement of the Department of State, which was approved by the President, that flights of American intelligence planes over our country are not a whim of some irresponsible officer, but realization of a plan, prepared by Allen Dulles, leader of the Central Intelligence Agency, a department within the jurisdiction of the United States President.

Mr. Herter admitted that the United States President had issued directives to collect various intelligence information by all possible means. On the basis of these directives, programs have been worked out and implemented, which, as Herter said, included large-scale observations from the air with the aid of aircraft and by means of penetrations.

I want you to pay attention to this—by means of penetrations, that is by means of reconnoitering, spying flights over the territory of a state with whom normal relations exist.

And this plan was approved by the President. An unheard of action. And after all this I am expected to say: "What nice people you are." That would mean lacking in self-respect.

I would say that Mr. Herter has removed all wrappers. He has removed all the paint with which, as it were, they camouflaged, made up and applied cosmetical treatment to the policy of the imperialists of the United States.

Now, through his statement, he has revealed the bestial, fear-inspiring face of imperialism.

So what? It turns out that this face inspires no fear any longer. Such actions of the U.S.A. militarists are not inspired by the heroism of these masterminds, but by cowardice.

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Danger comes not from one who has command of one's nerves and counts on one's powers and possibilities, but from a coward who fears everything.

I often read something like this: "Khrushchev claims that capitalism will die. Isn't this the reason why reconnaissance flights over the Soviet Union are made?" But it was not I who said it. It is Marx who explained this a hundred years ago. If Messrs. Capitalists consider that Marx is wrong, then this should console them, then there is nothing to lose one's head over or show the white feather?

Q. Did the Turkish, Pakistani and Norwegian authorities know about the provocative flight of the American plane?

A. It is difficult for me to speak in the name of these countries, but I do grant that they did not know—the Americans are not accountable to them. I do not think that even the Prime Ministers of the countries on whose territory American military bases are situated are let inside those bases.

The fault of such nations as Turkey or Pakistan is that they have joined aggressive blocs. The peoples saying on this score is "one sells one's soul to the devil; before one has done so, one can be one's own master, but after it is the devil that is the master." That is how matters are at present with Turkey, Pakistan and Norway.

I warn you, Messrs. Foreign Journalists, don't sell your souls to the devil, keep them to yourselves. You would do better by applying your energies to promoting the progress of society. The Communist ideas shape the most progressive and the most correct trend in the development of society.

The best of Americans, such as John Reed, the author of "Ten Days That Shook the World," grasped the great meaning of these ideas. John Reed was a very clever man. Yet he was not born Communist, but came to accept it during the October Revolution, and he died Communist.

Some of you scribble stories against communism out of lack of wisdom and understanding. May God forgive you for this.

When I read the bourgeois journalists' stories slandering Soviet realities and communism I get angry sometimes, but, on second thought, I say to myself: Not all the journalists are John Reeds. Indeed, they are ordinary men, hired by such publishers as Hearst, who, like spiders, seize a man and enmesh him in their web.

And if such a journalist fails to supply slanders against communism, what then, will Hearst, or any other publishing concern, need for him? Hearst will not keep such a correspondent for a single day.

HEARST ARTICLE CRITICIZED

I talked with Hearst twice. During our second conversation I told him: "How is it that you told me one thing and wrote another?" And he replied: "Did I sum up the interview wrongly?"

I must do him justice: He summed up the essence of the talk more or less accurately, but his commentary to it misrepresented the whole meaning of it.

I told him this, but he replied: But I am a capitalist, it is my own commentary that I give. Indeed, he is a capitalist, but most of you are not capitalists, nor will you ever be. So why have you got to serve capitalism?

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My conviction is that all the roads lead to communism. Where else can they lead to?

This is just what the American imperialists fear. This is why they get nervous, and fling themselves into reckless adventures. This shows they are not sure of their own system.

The State Department of the United States says that all countries engage in spying. But the Soviet Union never sent its planes into the United States or any other countries for reconnaissance purposes, nor does it do so. If there have been any individual instances of our planes inadvertently violating the airspace of other countries—this has happened on our frontier with Turkey and Iran—we have apologized to those countries and punished those responsible for such violations.

We want to warn those who may try to send their spies into this country to think carefully of the consequences.

Q. Do you still want President Eisenhower to come to the Soviet Union?

A. What shall I say? Take my place and say it for me.

You see for yourselves what difficulties are cropping up. I am frank with you. You know my attitude to the President of the United States. I have often spoken about it. But my hopes have been somewhat disappointed. I am a man and have human feelings. I am responsible for the direction of the Soviet Government.

You must understand that we Russians, we Soviet people, always go the whole hog: When we play, we play, and when we fight, we fight. So how can I now call on our people to turn out and welcome the dear guest that is coming to us. The people will say: Are you nuts? What kind of a dear guest is he who allows a plane to fly to us to spy? The American militarists who sent the aircraft on a spying mission over this country have put me, as one responsible for the arrangements for the United States President's arrival in the U.S.S.R., in a very difficult position.

Frankly speaking, I think the United States President understands this himself.

Supposing, before my visit to the United States, we had sent such a plane over there and they had shot it down. One can imagine the kind of welcome I would have got from Americans. They would have met me according to my desserts. I think everybody understands that.

One can guarantee, however, that during the President's visit there will be no excesses. Our people are courteous; they let off steam in words, and will leave it to the Government to act. They will not indulge in any insulting actions.

I think that American journalists and tourists feel now the constraint and discipline of Soviet people.

I have not heard of a single case of one of our people insulting an American. This is commendable. This speaks of the strong spirit of our people.

Q. Will the flight of this plane come up at the summit?

A. It already is the subject of discussion all over the world. That is why I do not regard it at present as necessary to put this matter on the agenda of the summit conference.

We are allowing for the fact that I alone will represent the Socialist countries at the conference while the Western powers will have three

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representatives there. But I do not think that two of these three approve of this aggressive, dangerous act of American brass hats.

Apparently you would like to know when I intend to fly to Paris. I intend to arrive in Paris, on May 14, a day or even two before the conference starts in order to get acclimatized a little. I like Paris, it's a nice city. Well, and if others do not come—I mention this because some are threatening that the conference may not take place—then it will be clear that it is not our fault that the conference did not take place. So we shall go to Paris! And if the conference does not take place? Well, we have lived without it for many years and will live for another hundred.

It is not our country alone that is interested in the conference. All the world is interested in it. The peoples of all the world want international tensions to relax, want a normalization of international relations. I believe our partners in the negotiations are as interested in the conference as the Soviet Union. Therefore the conference will depend upon our partners.

We are ready. I intend to emplane for Paris on Saturday, May 14.

Some diplomats take offense and say that Khrushchev, if you please, is indulging in too harsh expressions. I should like to have heard their reactions had a similar aggressive invasion been committed against their country.

What do you expect of me, after all, that I should take off my hat and welcome this invasion? No, we shall meet gangsters the way they deserve. And this was a gangster, bandit raid.

Have you seen here the "air sampling instruments?" How can the authors of the fib look into our eyes after it was exposed? True, we know the kind of eyes imperialists have. As the saying goes: "Spit in their eyes and they would keep saying: God's dew."

Now you see that I did not tell the whole story deliberately at the Supreme Soviet session because we knew whom we were dealing with. We did not say at first that the pilot was alive, that the instruments were intact, that the plane did not explode.

They believed that the pilot committed suicide, and now that he is alive the American press seriously reprimands the pilot for a breach of his instructions, for failure to commit suicide and surrendering instead.

Some in the United States say that the pilot must be brought to trial for breaking the instructions and failing to destroy himself. Well, this is bestial talk. This is the ideology of imperialism. You, gentlemen, American journalists, you read newspapers, don't you? This is a horrible thing.

NOTE RECEIVED FROM U.S.

Q. Did not the American Chargé d'Affaires ask for an interview with Powers?

A. The Americans have sent us a note on this question and asked to be allowed to have an interview with him. But they themselves understand that this is too much. The pilot is now under investigation, he is a spy, isn't he? So how can one speak about an interview with him? He must answer before our Soviet court.

Q. Does this mean that neither the Ambassador nor the Chargé d'Affaires will be allowed to see Powers?

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A. I did not say that. Maybe they will, maybe they will not. We shall see later. I cannot reply to this question now because the investigation is in progress.

Q. Will you regard as aggressive actions flights of aircraft of Western powers to Berlin after the signing of a peace treaty with Eastern Germany?

A. We have already made a statement in this connection. I repeat: After the signing of a peace treaty with the German Democratic Republic, the status determined by the terms flowing from the military surrender for this territory will change.

Since that moment the occupation of West Berlin will be over, all access to Berlin which was based upon the surrender of Germany will cease from that moment. Then the German Democratic Republic will exercise full control of its territory and will also control access to West Berlin, which is situated on its territory.

If the German Democratic Republic comes to terms with the countries concerned and will allow them to use the airspace, the waterways, the rail and highways, this will no longer be our business. That will be the business of the German Democratic Republic. That's her sovereign right.

Some say that the Western powers will force their way into West Berlin.

I want to make it clear. If anyone tries to force his way, our military units stationed in the G. D. R. to safeguard peace will counter the force of violators of peace with their own force, and let some hotheads in the West ponder what would come of that for them.

DELAY IN VISIT SUGGESTED

Q. Considering this aircraft incident and your attitude toward President Eisenhower, wouldn't you prefer Eisenhower's visit to be put off?

A. We shall exchange views with the President on this question when we meet in Paris. We still want to find ways to improve relations with America, we want to have normal relations with the United States. And we believe that with time Soviet-American relations must grow into friendly relations between the peoples of our countries.

That would be normal and that is what all normal people are striving and will continue to strive for.

Any more questions? In conclusion I have this to say, we deal harshly with those who invade the borders of our homeland, who violate our sovereignty. But we want to live in peace and friendship with all nations. I hope you will understand our attitude when we angrily condemn such aggressive actions. But we take a sober view of things and realize that even the sharpest polemics are better than war.

This is why we shall do everything to have this strain relieved, shall do everything to normalize the international situation and to restore good relations with the United States if, of course, the United States also contributes to this.

I should ask you to take this into account and not to write anything that could increase tension still further. What do you need it for? After all, you will be in for trouble if a war breaks out. A war does not bring happiness to anyone.

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During the past few days I have read many statements by American Senators, Congressmen, businessmen, and I believe it is a good sign that many of them deplore this action of their Government.

I believe it is a good sign that people do not lose their heads, that not everyone explains the matter as Herter has done.

VISIT TO FRANCE HAILED

Q. What would you like to wish the French people in connection with your trip to Paris?

A. The French people have given me a good welcome, just as the American people, but, of course, I do not want to set one people off against the other. However, my visit to France was undertaken later and the impressions are therefore fresher.

I am very much pleased not only with the welcome given to me by the French people but also with the talks I had with President de Gaulle. As to the people, well, all the peoples want peace. Wars are started by the governments, while the people's lot is to spill their blood. This is why they all want peace.

The French people also want peace. We fought against militarist Germany together with France. If war breaks out, and it can be unleashed by West Germany, Frenchmen will remember that they had a good ally in the past—the Soviet Union. This ally may come in handy again. But it is best we prevent war and be allies in the struggle for peace.

I think it is time to end this impromptu press conference.

Let me thank you, dear comrades and gentlemen, let me wish you success.

Unfold the truth, the noble cause of peace, and you will earn the respect of your people.

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13. TEXT OF UNITED STATES NOTE TO THE SOVIET GOVERNMENT, MAY 12, 1960

[Department of State press release No. 262]

There follows the text of the note delivered on May 12, 1960, to the Government of the Union of Soviet Socialist Republics, in reply to the Soviet note of May 10, 1960:

The Embassy of the United States of America refers to the Soviet Government's note of May 10 concerning the shooting down of an American unarmed civilian aircraft on May 1, and under instruction from its Government, has the honor to state the following.

The United States Government, in the statement issued by the Department of State on May 9, has fully stated its position with respect to this incident.

In its note the Soviet Government has stated that the collection of intelligence about the Soviet Union by American aircraft is a "calculated policy" of the United States. The United States Government does not deny that it has pursued such a policy for purely defensive purposes. What it emphatically does deny is that this policy has any aggressive intent, or that the unarmed U–2 flight of May 1 was undertaken in an effort to prejudice the success of the forthcoming

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meeting of the Heads of Government in Paris or to "return the state of American-Soviet relations to the worst times of the cold war." Indeed, it is the Soviet Government's treatment of this case which, if anything, may raise questions about its intentions in respect to these matters.

For its part, the United States Government will participate in the Paris meeting on May 16 prepared to cooperate to the fullest extent in seeking agreements designed to reduce tensions, including effective safeguards against surprise attack which would make unnecessary issues of this kind.

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14. TRANSCRIPT OF "ABC'S COLLEGE NEWS CONFERENCE," WITH GEORGE V. ALLEN, DIRECTOR, UNITED STATES INFORMATION AGENCY, MAY 15, 1960

The ANNOUNCER. Here comes the future. From Washington, D.C., we present the Peabody Award-winning College News Conference, where the leaders of tomorrow meet the leaders of today.

Here today to meet our panel of university reporters is the Honorable George V. Allen, Director of the United States Information Agency. Now here is our founder and moderator, Ruth Hagy.

Miss HAGY. Good afternoon and welcome to another weekly edition of College News Conference.

Mr. Allen, it is a great pleasure as always to have you back in our campus newsroom.

Mr. ALLEN. Thank you.

Miss HAGY. I would like you to meet the students who are going to interview you at this time. From George Washington Law School, Chuck Manatt, who is the president of the National Federation of Young Democrats. From Trinity College, Martha Dodd, who is the daughter of the distinguished Senator from Connecticut, Senator Dodd. From Howard University, Timothy Jenkins, the president of the Student Council. From the University of Maryland, Sybil Rappoport, the secretary of the student body. From Tufts University, David Jackson, who is a Sears, Roebuck Scholar who comes to us under the National Merit Scholarship program. He enjoys one of the fine scholarships given by many corporations in this country to enable many of our talented young people to continue with their education.

Now, students, as you know Mr. Allen is a very distinguished diplomat and it is a good thing for us that he is because he is in a very hot seat today. This is the day before the beginning of the summit conference and Russia goes into this international poker game with a full house of cards. The advantage that they have gained from the downing of the U–2 plane and our subsequent admission that the plane was on a spying mission, and then the launching of a four-and-a-half-ton space satellite, today, five times larger than anything we have put into the air and more than three times larger than any of their previous launchings, carrying a dummy—not a man—and incidentally, this feat was predicted on this very program two weeks ago by Senator Henry Jackson who anticipated that on the eve of the summit there would be another great space achievement by the Russians.

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And so you see, Mr. Allen, as our Number One public relations officer and his agency who have the job of interpreting us to the rest of the world, find that on the eve of the summit they have indeed—they find us in a very precarious and a very delicate position with the Russians having scored these two coups. However, he has had a great deal of experience in handling all sorts of matters. He has been our Ambassador to Iran, to India and Nepal, to Yugoslavia and to Greece. He has been Assistant Secretary of State for both Public Affairs and for Near Eastern Affairs. I am sure that he will be able to handle this one.

Who has the first question for him?

Mr. JENKINS. Mr. Allen, given that your agency has the unique responsibility of interpreting our foreign policy in its most favorable light abroad, I wonder how you intend to vindicate the U.S. position on this spy incident?

Mr. ALLEN. Let me say right off, that the responsibility of my agency is to try to represent the United States as honestly and as fairly as we can. Your implication that we try to put as favorable an aspect on the United States carries more of the connotation that we are merely trying to present the good side and hide the bad side. That is not the philosophy of the U.S. Information Agency. I must emphasize and say in all genuineness that we try to present the United States as honestly and as fairly as we can.

Insofar as the recent events are concerned, we have played them right straight down the middle just as straight as we know how to play them.

Miss RAPPOPORT. Well, Mr. Allen, what have the reactions been abroad? How has our explanation been accepted by the foreign peoples?

Mr. ALLEN. You refer to the U–2 incident, of course?

Miss RAPPOPORT. Yes.

Mr. ALLEN. Reactions abroad—again I am going to be just as honest and frank as I possibly can—have mainly centered around three things: One of them is somewhat favorable; two of them are somewhat unfavorable. The rather favorable side has been a very considerable amount of comment abroad, of understanding of the necessity of the United States and the free world in general, to try its best to find out what is going on behind the Iron Curtain.

There is a very general concern about getting more information and an understanding of efforts on the part of the United States to try to do it. Furthermore in that same line there has been a rather considerable amount of appreciation for the fact that the United States was capable of carrying out activities of this kind.

The two unfavorable aspects: First, the confusion, shall I say, of the announcements that came out of Washington on the subject and not only the original announcement saying that the plane was on a weather mission, but subsequent announcements which need some clarification here today, I think, concerning our right to carry out activities of this kind which have caused dismay in various foreign circles.

But the other unfavorable aspect is the wide concern on the part of people in many countries abroad lest this affect adversely the chances of the success of the summit. Most of them around the world are

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hoping very much that the summit will find some measure of success, and this has caused dismay.

Mr. MANATT. Mr. Allen, who is the person in authority who authorized the original statement that this was a weather plane?

Mr. ALLEN. That was a spontaneous reply, as a matter of fact. It was already prepared, according to circumstances which were foreseen and it was just almost a, I think, a pushbutton reply. As far as the actual reply made, it was made by the spokesman for the State Department, Mr. Lincoln White. I spoke to Lincoln White yesterday and he said he gave out exactly the honest information he had in his hand from his reports from the field.

Mr. MANATT. Don't you believe, sir, this will prove very unfortunate to involve NASA in something like this when our complete intentions were to divorce it from the military area and to bring the civilian areas into space much more?

Mr. ALLEN. That is an unfortunate aspect of it, yes.

Miss HAGY. May I clarify one point that I think has people confused. The officials of NASA who gave out this information were acting in good faith, were they not? They were under the impression that this was a weather plane, that this was a weather mission, this reconnaisance mission? Or were they in on the deception?

Mr. ALLEN. That is getting into more details with regard to inside operations than I think I ought to try to comment on in all frankness. At the same time I will say this, that I know that the spokesman of the State Department who gave out the information was acting in entirely good faith when he said that it was a weather plane.

Now your immediate question is, Doesn't this embarrass us by getting NASA involved in military operations? It does, I think. On the other hand let me remind you that the United States has been in the forefront from the beginning on the whole question of space, of trying our level best in every international conference that we have had, in the United Nations and in our talks with the Russians, and so forth, to make outer space an international operation, with cooperation—we have gone very far in offering to have internal space supervised—outer space supervised by multilateral operation. We are perfectly ready to go in with the Russians and anybody else in an international operation on space, just as we have been ready to go in with the Russians on an open-skies proposal for over-flights by airplanes. We have been pressing for this kind of agreement since—well, since the United Nations started.

Miss DODD. Mr. Allen, as a propaganda specialist, what do you think Mr. Khrushchev will do with the pilot of the plane?

Mr. ALLEN. That is hard to predict. I have seen some suggestion that he may present him at the summit meeting as a sort of a gesture. I don't know. I would doubt that. Judging by the background, I would guess that he would probably hold him as a card close to his chest for a while.

Miss DODD. Well, if he does put him up for trial, how far do you think the United States should back the pilot?

Mr. ALLEN. We should do everything possible to see that he gets a fair and honest trial. That means, of course, through diplomatic procedures. I want to emphasize this: A lot has been said about the fact that this man was a spy and caught spying and so forth. There are a

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lot of different definitions of "spying" and I don't want to try to quibble, but I do think I ought to point this out and that more people ought to recall it: When he went down he told exactly what his mission was and exactly what he was expected to do, and he was under instruction to do that. He wasn't wearing a false mustache and a cloak and dagger and that sort of business that you usually think of as a spy pretending that he is somebody that he isn't. He gave an honest report of what his mission is and I think that ought to be recalled by everybody concerned.

Mr. JACKSON. Premier Khrushchev last week sent formal protests to the countries that based the U–2's in Europe and in Asia. President Eisenhower also stated that in event of Russian intervention we would go to the aid of our allies. Already Norway has lodged a formal protest with the United States for using Norwegian bases for these flights. How can our allies give much credence to such a pronouncement from the President when they see our continual backing off in the Israeli-Egypt dispute over the use of the Suez Canal when we stated that we would go to Israel's aid to get free use of the Suez Canal and we have continually backed off on that?

Mr. ALLEN. We never said we would use Marines or the Navy or the Army to help Israel get through the Suez Canal. We have every time the question has come up in the United Nations or anywhere else, we have expressed our views very forcibly and very strongly that the Suez Canal ought to be open to the peaceful shipping of all nations.

Mr. JACKSON. But don't we have a moral commitment to Israel to make sure that it is?

Mr. ALLEN. When you say "make sure" does that mean go to war? That is the usual point of what you are talking about. When you are saying: "You can't believe in us because we say that we have a moral commitment to see that Israel gets through the Suez Canal," we have never said that we would go to war to assure that Israel would get through the Suez Canal.

Miss RAPPOPORT. I would like to get back to the unfavorable reaction of which you spoke before about the U.S. right.

The United States has maintained that this spying was sort of a necessary evil. Yet Mr. Allen, as a member perhaps of the younger generation I would like to know your opinion of the example of morality that is being set by the United States Government in justifying this breaking of international law.

Mr. ALLEN. The international law being the encouragement of an airplane over the Soviet territory or the spying?

Miss RAPPOPORT. Espionage.

Mr. ALLEN. The espionage part of it.

Are you suggesting for reasons of morality that the United States ought to get completely out of any espionage business?

Miss RAPPOPORT. I would like to know your opinion on the morality of it.

Mr. ALLEN. That is a very fair question. I wish very much, Sybil, that we could. Nothing would please me better. If we had a world which would permit that. I think, as a matter of fact, that we have gone a far way towards an open society in proposals which we have made, such as those which President Eisenhower made in 1955 in

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which he not only offered to the Soviet Union but urged the Soviet Union to get rid of this closed society, this suspicion and these Iron Curtains that are going to prevent people from finding out. Let the planes fly opening. The United States has been in the forefront in urging that kind of a result.

Miss RAPPOPORT. If you say therefore because of this tightness of the iron curtain there is a need for these reconnaissance flights in order to penetrate it, then why did the Government admit it, thus jeopardizing future security of the United States?

Mr. ALLEN. That is a very important question and I have been very much interested and I may say quizzical about a great many comments that I have seen on that very subject. Damning the United States for having admitted that the plane was flying over Soviet territory for the purpose of obtaining information about the Soviet Union. I must say right here that I think that that was one of the most important things that has been done in this whole field of trying to build an open society. The frank admission on the part of the United States that we did it.

Now a lot of people will say: "You didn't do it until your hand was forced," and all that kind of matter, but I must emphasize that I think this admission—yes, we were trying to get information to guard this nation against surprise attack. We have gone through Pearl Harbor, we have submitted to surprise attack and where there is a great area of the world where there is no other means of finding out what is going on, the United States has said: "Yes, we are going to try—we have a right to try to get information as best we can."

Let me say just one more thing—I know you want to ask questions; I don't want to take too much time on my own, but there has been a great misunderstanding that I would like to correct, today: Mr. Herter, the Secretary of State, has not said that we are going to continue to fly. He has said that there is an obligation and a responsibility on the part of the government of the United States and of the free world to try to obtain information to guard against surprise attack. But he has not said that we are going to continue to fly. He hasn't said one way or another.

Mr. JENKINS. Mr. Allen, you seem to express confidence in the virtue of our admission, on moral grounds, but now the consideration of this admission in terms of jeopardizing the position of our allies. Given that the Russian statement is that there is a possibility of missile retaliation, do you recognize that this is a thing which might compromise the virtue of our open admission?

Mr. ALLEN. Timothy, I didn't justify our admission on moral grounds, no. I said that in my opinion, this is one step towards the general concept of an open society—open skies. I am not saying whether it is moral or immoral. I am just saying that in my opinion is a step in that general direction.

Mr. JENKINS. But considering the practicality of our allies being very much involved in our making such an admission, namely that the planes took off probably from their territories, doesn't this seriously jeopardize their position, in juxtaposition to the Soviet Union?

Mr. ALLEN. Yes, that is one of the very difficult problems of this whole situation of the U–2, is this situation of our allies. There again I am quite frank to say here that it is perfectly obvious—I am not

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telling any secrets when I say that our allies are naturally going to be much more concerned from now on. It is quite natural that they would be, about the actions taken from airbases in their territory.

On the other hand, in keeping with the same idea of trying to develop open skies, I believe that we will have the support of the general free world in the direction, in the trend in which the United States is trying to go.

Miss HAGY. Mr. Allen, you have used the term "open societies" now, twice. I wonder if you would perhaps elaborate on this. We have heard about President Eisenhower's open skies plan which he presented before the United Nations and which presumably he is taking to the summit conference in a revised form. Could you tell us something about how the open society differs from open skies?

Mr. ALLEN. Well, the open society is a new and enlarged phrase but it grows out of the idea that we are going to get away from the seclusion and secrecy of every military action and allow—when we offer opportunity for Soviet planes to fly over the United States, take photographs, see anything they want to, that is open skies. All we ask is that we be able to do the same.

If you can take that step, then perhaps you might get towards the idea of societies being open. That is laboratories, combined tests for atomic explosions, things of that sort. We are trying to build. We want to encourage the Russians to come in with us, to investigate the explosion of atomic energy underground, in tests to see how the seismographic implements can detect it. All those sorts of things.

Mr. MANATT. Mr. Allen, in preparation for the summit meeting we have had in a few short weeks the announcement that Vice President Nixon may go to the summit, we have had the announcement of the reconvening of underground nuclear testing and also the U–2 plane incident.

I am wondering, do any members of our government in reference to the people in preparing for the summit consult with you in relation to, for example, the nuclear testing statement, and what effect this will have on the rest of the world and what effect it will have on the summit meeting?

Mr. ALLEN. I must say that I was not consulted with regard to the nuclear testing statement, but I want to emphasize here again that oftentimes these statements are—the impression in the public mind is what they see in a headline. We haven't said we are going to start resuming nuclear weapons testing at all. We have offered to the Russians an opportunity to participate with us in examining how nuclear testing, nuclear explosions underground, can be detected through improved seismographic instrumentation.

Now that is quite a different thing from the general idea that we have suddenly said we are going to start resuming——

Miss HAGY. That is perfectly true, Mr. Allen. It took a whole week for the true picture of this resumption of tests to become clear.

Now isn't it a part of the obligation to make sure that the original statements are presented with such accuracy that there is not a chance of this harm being done to us in a propaganda and public opinion way? Shouldn't they consult with you in the method of presentation so that it doesn't take a whole week for a refutation to penetrate?

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Mr. ALLEN. I think perhaps I will have to agree with you although I must say no amount of consulting with me will determine how American newspapers are going to write their headlines.

Mr. JACKSON. I would like to get back to the "open society" for a moment. Don't you agree that before any meaningful open society may be attained there must be a government by law and not of force implemented by men?

Mr. ALLEN. In each nation, do you mean, or in the world?

Mr. JACKSON. In the world.

Mr. ALLEN. In the world.

Yes. That opens up a very much larger question. We have to achieve a government of laws in the world, a rule of law in the world; yes, very definitely.

Mr. JACKSON. Then don't you think that we are slightly hypocritical in our outlook towards international law? We will take the decisions of the World Court when they are favorable to us or we will accept their decisions. If we don't accept their decisions, we won't abide by them. We will break international law when it can be justified for our mutual security.

Mr. ALLEN. You have it almost right. What our position is under the Connally Amendment, we will not accept the jurisdiction of the World Court if we consider that it is a part of our internal matters and therefore we keep the decision as to whether we will allow a case to go to the World Court or not. I couldn't agree with you more. I think that we ought to build up the international court in every way we possibly can. That is the smallest little step we can take. We ought, in my opinion—I don't have any hesitation in stating it right here as strongly as I can—that the first and smallest step is to accept the jurisdiction of the international court.

Mr. JENKINS. Don't we in effect, then, by positing such a rule of expediency undercut the real significance of any such meeting at the summit, where four men are going to sit down in the center of Europe and decide the world's problems with absolute criteria by which they shall operate in making their decisions? We have no common acceptance on a legal theory, which should be operative between nations. And at the last summit conference it was the policy of the USIA to present this as a very favorable meeting which had accomplished many significant gains.

Now when we view this in the light of the summit conference coming on, haven't we actually by the mere admission that this is not the real means for arriving at settlements, undercut the significance of such a meeting?

Mr. ALLEN. I am not quite certain, Timothy—let me try to say what I think you mean.

Mr. JENKINS. Or will there be any attempt of USIA to bring out of this meeting things which are significant? Would those things which are significant really be pertinent to the solutions of peace for our society?

Mr. ALLEN. Well, I think the summit meeting has possibilities of finding things that would add towards the peace of the world; yes.

Miss HAGY. Are you optimistic about it?

Mr. ALLEN. Unfortunately—I wish I were. I think it is possible that the summit meeting—I am just guessing, now, but it seems to

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me it has the most likely chance of accomplishment in the field of new instructions to the disarmament negotiators. I wish I could be optimistic.

Your point, I think, Timothy, is why do we have summit meetings if we agree that a rule of law in the world is what is needed. The rule of law in the world is what we are heading towards, but we have to take an awful lot of steps in between time in every direction possible in order to achieve that rules of law.

Mr. MANATT. Mr. Allen, you have said, I believe, in the past that executive initiative and positive programs make the best propaganda in themselves, new ideas, new things we are doing.

What new programs or new ideas is President Eisenhower taking to the summit with him other than the warmed-over version of the open skies announcement of five years ago?

Mr. ALLEN. President Eisenhower will announce that tomorrow at the meeting. It certainly wouldn't be proper for me to tell you today what he is going to say tomorrow.

Miss RAPPOPORT. I would like to ask something about this morning's news story about the satellite being launched yesterday by the Soviets. You recently said that we had caught up with the propaganda gains of the Russians in space. Doesn't this now put them out once more ahead of us in propaganda, and how does your agency counteract this?

Mr. ALLEN. Putting earth satellites up is always going to be a kind of a seesaw thing. The Russians have a big jump today in putting up a four-ton satellite. It is by far the largest that has ever been put up and it is an important step towards evenually putting a man in space.

I am the first to recognize that. Although I will remind you, and our listeners, that until this morning the only earth satellites going around the earth were American. There were five of them. The only ones today that are sending back information from outer space are American. Five of them are still radioing back. The amount of information we have given to the world on space, on the dimensions of space and what goes on out there has been, I'd say, almost ten to one American against Russian.

Miss HAGY. Nevertheless, if they succeed in putting a man into space before we do—and it looks now as though they might with this trial test that they have just launched this morning—will that not give them a great propaganda advantage?

Mr. ALLEN. Yes, it will. It will certainly give them a great propaganda advantage, but I wouldn't—as a propagandist I wouldn't propose that we put up a man there until we are pretty sure that we can get him back—absolutely sure.

Mr. JENKINS. Mr. Allen, it is a conceded fact that we are now fourth with respect to overseas broadcasting.

Mr. ALLEN. In factor of time on the air, yes.

Mr. JENKINS. Yes. It is also a surprising fact that many of the major auto manufacturers invest more in public relations than we do as a whole country. I wonder then what you have to say about the probabilities of an increase in the budget out of this year's Congress?

Mr. ALLEN. We are asking for a small increase this year. I hope and believe we will get it.

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Miss HAGY. Thank you very much. We are going to have to conclude on that note, sir, because our time has just run out. It is all too short when we have so many interesting things to talk about with you.

Thank you, students, for your interesting questions. We would like to invite all of you at home to join us again next week when our guest will be Governor G. Mennen Williams, of Michigan, and until then, goodby and a good week from Ruth Hagy and the college news correspondents of College News Conference.

The ANNOUNCER. College News Conference is created and produced by Ruth Hagy. Assistant producer, Johanne Curran. This program was directed by Richard Armstrong and originated in Washington, D.C.

This has been a presentation of ABC Public Affairs.

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15. TEXT OF PREMIER KHRUSHCHEV'S STATEMENT AT PARIS SUMMIT CONFERENCE, MAY 16, 1960

[From the New York Times, May 17, 1960]

Paris, May 16 (Reuters)—Following are the text, in unofficial translation, of a statement made by Premier Khrushchev of today's session of the summit conference and made public by the Soviet Union.

President de Gaulle.

Prime Minister Macmillan.

President Eisenhower.

Permit me to address you with the following statement:

A provocative act is known to have been committed recently with regard to the Soviet Union by the American Air Force. It consisted in the fact that on May 1 a United States military reconnaissance aircraft invaded the Soviet Union while executing a specific espionage mission to obtain information on military and industrial installations on the territory of the U.S.S.R. After the aggressive purpose of its flight became known, the aircraft was shot down by units of the Soviet rocket troops. Unfortunately, this was not the only case of aggressive and espionage actions by the United States Air Force against the Soviet Union.

Naturally, the Soviet Government was compelled to give appropriate qualification to these acts and show up their treacherous nature, which is incompatible with the elementary requirements of the maintenance of normal relations between states in time of peace, not to speak of its being in gross contradiction to the task of lessening international tension and creating the necessary conditions for the fruitful work of the summit conference. This was done both in my speeches at the session of the Supreme Soviet of the U.S.S.R. and in a special note of protest sent to the United States Government.

At first, the United States State Department launched the ridiculous version that the American plane had violated the borders of the U.S.S.R. by accident and had no espionage or sabotage assignments. When irrefutable facts clearly proved the falsity of this version, the United States State Department on May 7, and then the Secretary of State on May 9, stated on behalf of the United States Government that American aircraft made incursions into the Soviet Union with mili-

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tary espionage aims in accordance with a program endorsed by the United States Government and by the President personally.

Two days later, President Eisenhower himself confirmed that execution of flights of American aircraft over the territory of the Soviet Union had been and remained the calculated policy of the United States. The same was declared by the United States Government in a note to the Soviet Government on May 12. Thereby the United States Government is crudely flouting the universally accepted standards of international law and the lofty principles of the United Nations Charter, under which stands the signature of the United States of America also.

INDIGNATION WAS VOICED

The Soviet Government and the entire people of the Soviet Union met these declarations of leading statesmen of the U.S.A. with indignation, as did every honest man and woman in the world who displays concern for the destinies of peace.

Now, at a time when the leaders of the Governments of the four powers are arriving in Paris to take part in the conference, the question arises of how is it possible productively to negotiate and examine the questions confronting the conference when the United States Government and the President himself have not only failed to condemn this provocative act—the intrusion of the American military aircraft into the Soviet Union—but, on the contrary, have declared that such actions will continue to be state policy of the U.S.A. with regard to the Soviet Union.

How can agreement be sought on the various issues that require a settlement with the purpose of easing tension and removing suspicion and mistrust among states when the Government of one of the great powers declares bluntly that its policy is intrusion into the territory of another great power with espionage and sabotage purposes and, consequently, the heightening of tension in relations among states?

It is clear that the declaration of such a policy, which can be pursued only when states are in a state of war, dooms the summit conference to complete failure in advance.

We, naturally, take note of the declaration by the United States Government of such a policy and state that in the event of a repeated intrusion by American aircraft into the Soviet Union we shall shoot these planes down.

The Soviet Government reserves the right in all such cases to take the appropriate retaliatory measures against those who violate the state sovereignty of the U.S.S.R. and engage in such espionage and sabotage regarding the Soviet Union. The U.S.S.R. Government reiterates that, with regard to those states that, by making their territory available for American military bases, become accomplices in aggressive actions against the U.S.S.R., the appropriate measures will also be taken, not excluding a blow against these bases.

In this connection it is impossible to ignore the statement by President Eisenhower to the effect that under the threat of a peace treaty with the German Democratic Republic he could not take part in the summit conference, though what he called a threat was merely a declaration by the Soviet Government of its firm resolve to do away with

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the vestiges of war in Europe and conclude a peace, and thus to bring the situation—particularly in West Berlin—in line with the requirements of life and the interests of insuring the peace and security of the European nations.

How then can the Soviet Government take part in negotiations under conditions of an actual threat emanating from the United States Government, which declared that it would continue to violate the U.S.S.R. borders and that American aircraft had flown and would continue to fly over the Soviet Union's territory? The United States Government has thereby declared its intention to continue unheard of and unprecedented actions directed against the sovereignty of the Soviet state, which constitutes a sacred and immutable principle in international relations.

"OVERT AND HONEST POLICY"

From all this it follows that for the success of the conference it is necessary that the Governments of all the powers represented at it pursue an overt and honest policy and solemnly declare that they will not undertake any actions against one another which amount to violation of the state sovereignty of the powers.

This means that if the United States Government is really ready to cooperate with the Governments of the other powers in the interests of maintaining peace and strengthening confidence between states it must, firstly, condemn the inadmissible provocative actions of the United States Air Force with regard to the Soviet Union and, secondly, refrain from continuing such actions and such a policy against the U.S.S.R. in the future.

It goes without saying that in this case the United States Government cannot fail to call to strict account those who are directly guilty of the deliberate violation by American aircraft of the state borders of the U.S.S.R.

Until this is done by the United States Government, the Soviet Government sees no possibility for productive negotiations with the United States Government at the summit conference. It cannot be among the participants in negotiations where one of them has made treachery the basis of his policy with regard to the Soviet Union.

If, under the obtaining conditions, the Soviet Government were to participate in negotiations clearly doomed to failure, it would thereby become a part to the deception of the nations, which it has no intention of becoming.

It stands to reason that if the United States Government were to declare that in the future the United States will not violate the state borders of the U.S.S.R. with its aircraft, that it deplores the provocative actions undertaken in the past and will punish those directly guilty of such actions, which would assure the Soviet Union equal conditions with other powers, I, as head of the Soviet Government, would be ready to participate in the conference and exert all efforts to contribute to its success.

As a result of the provocative flights of American military aircraft and, above all, as a result of such provocative flights being declared national policy of the United States of America for the future regard to the Socialist countries, new conditions have appeared in international relationships.

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Naturally, under such conditions, we cannot work at the conference; we cannot because we see the positions from which it is intended to talk with us: under the threat of aggressive reconnaissance flights. Espionage flights are known to be undertaken with reconnaissance purposes with the object of starting a war. We, therefore, reject the conditions the United States of America is creating for us. We cannot participate in any negotiations and in the solution of even those questions which have already matured; we cannot because we see that the United States has no desire to reach a settlement.

"DECEPTION" IS RULED OUT

It is considered to be a leader in the Western countries. Therefore, the conference would at present be a useless waste of time and a deception of the public opinion of all countries. I repeat, we cannot under the obtaining situation take part in the negotiations.

We want to participate in the talks only on an equal footing, with equal opportunities for both one and the other side.

We consider it necessary for the peoples of all the countries of the world to understand us correctly. The Soviet Union is not renouncing efforts to achieve agreement. And we are sure that reasonable agreements are possible, but, evidently, not at this but at another time.

For this, however, it is necessary first of all that the United States admits that the provocative policy it has declared by a policy of "unrestricted" flights over our country is to be condemned and that it rejects it and admits that it has committed aggression and admits that it regrets it.

The Soviet Government is deeply convinced that if not this Government of the United States then another, if not another then the next one would understand that there is no other way out but peaceful coexistence of two systems, capitalist and Socialist. Either peaceful coexistence or war, which will result in a disaster for those who are pursuing aggressive policy.

PEACEFUL LINKS STRESSED

Therefore, we think that some time should be allowed to elapse so that the questions that have arisen should settle and so that those responsible for the determining of the policies of a country would analyze what kind of responsibility they placed upon themselves, having declared an aggressive course in their relations with the Soviet Union and other Socialist countries. Therefore, we would think that there is no better way out than to postpone the conference of the heads of government for approximately six to eight months.

The Soviet Union on its part, will not lessen its effort to reach an agreement. I think that public opinion will correctly understand our position, will understand that we were deprived of the possibility to participate in these negotiations.

However, we firmly believe in the necessity of peaceful coexistence because to lose faith in peaceful coexistence would mean to doom mankind to war, would mean to agree with the inevitability of wars, and under the circumstances it is known what disasters would be brought by a war to all nations on our planet.

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I wish to address the people of the United States of America. I was in the U.S.A. and met there with various sections of the American people and I am deeply convinced that all the strata of the American people do not want war. An exception constitutes but a small frantic group in the Pentagon and, supporting it, militarist quarters that benefit from the armaments race, gaining huge profits, which disregard the interests of the American people and in general the interests of the peoples of all countries, and which pursue an adventurous policy.

We express gratitude to President de Gaulle for the hospitality and rendering us the possibility to meet in Paris, the capital of France. We also appreciate the efforts of the Government of Great Britain and Prime Minister Macmillan personally.

We regret that this meeting has been torpedoed by the reactionary circles of the United States of America by provocative flights of American military planes over the Soviet Union.

We regret that this meeting has not brought about the results expected by all nations of the world.

Let the disgrace and responsibility for this rest with those who have proclaimed a bandit policy toward the Soviet Union.

ISSUE OF EISENHOWER VISIT

As is known, President Eisenhower and I have agreed to exchange visits. Last September, I made such visit to the U.S.A. We were greatly gratified by that visit, the meetings and talks we had in the United States, and for all this we expressed our appreciation.

The President of the U.S.A. was to make a return visit to our country. Our agreement was that he would come to us on June 10. And we were being prepared to accord a good welcome to the high guest.

Unfortunately, as a result of provocative and aggressive actions against the U.S.S.R., there have been created now such conditions when we have been deprived of a possibility to receive the President with the proper cordiality with which the Soviet people receive welcome guests. At present, we cannot express such cordiality to the President of the U.S.A. since, as the result of provocative flights of American military planes with reconnaissance purposes, there are created conditions clearly unfavorable for this visit.

The Soviet people cannot and do not want to be sly. That is why we believe that at present the visit of the President of the U.S.A. to the Soviet Union should be postponed and agreement should be reached as to the time of the visit when the conditions for the visit would mature. Then the Soviet people will be able to express proper cordiality and hospitality toward the high guest representing the great power with which we sincerely want to live in peace and friendship.

I believe that both President Eisenhower and the American people will understand me correctly.

The Soviet Government states that on its part it will continue to do its utmost to facilitate the relaxation of international tension, to facilitate the solution of problems that still divide us today. In that we shall be guided by the interests of strengthening the great cause of peace on the basis of peaceful coexistence of states with different social systems.

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16. TEXT OF EISENHOWER STATEMENT FOLLOWING THE SUMMIT CONFERENCE MEETING ON MAY 16, 1960

[Department of State press release No. 271, May 17, 1960]

Following is the text of the statement by President Eisenhower, following the May 16 meeting of the Four Heads of Government:

Having been informed yesterday by General de Gaulle and Prime Minister Macmillan of the position which Mr. Khrushchev has taken in regard to this Conference during his calls yesterday morning on them, I gave most careful thought as to how this matter should best be handled. Having in mind the great importance of this Conference and the hopes that the peoples of all the world have reposed in this meeting, I concluded that in the circumstances it was best to see if at today's private meeting any possibility existed through the exercise of reason and restraint to dispose of this matter of the overflights, which would have permitted the Conference to go forward.

I was under no illusion as to the probability of success of any such approach but I felt that in view of the great responsibility resting on me as President of the United States, this effort should be made.

In this I received the strongest support of my colleagues, President de Gaulle and Prime Minister Macmillan. Accordingly, at this morning's private session, despite the violence and inaccuracy of Mr. Khrushchev's statements, I replied to him on the following terms:

I had previously been informed of the sense of the statement just read by Premier Khrushchev.

In my statement of May 11 and in the statement of Secretary Herter of May 9 the position of the United States was made clear with respect to the distasteful necessity of espionage activities in a world where nations distrust each other's intentions. We pointed out that these activities had no aggressive intent but rather were to assure the safety of the United States and the free world against surprise attack by a power which boasts of its ability to devastate the United States and other countries by missiles armed with atomic warheads. As is well known, not only the United States but most other countries are constantly the targets of elaborate and persistent espionage of the Soviet Union.

There is in the Soviet statement an evident misapprehension on one key point. It alleges that the United States has, through official statements, threatened continued overflights. The importance of this alleged threat was emphasized and repeated by Mr. Khrushchev. The United States has made no such threat. Neither I nor my Government has intended any. The actual statements go no further than to say that the United States will not shirk its responsibility to safeguard against surprise attack.

In point of fact, these flights were suspended after the recent incident and are not to be resumed. Accordingly, this cannot be the issue.

I have come to Paris to seek agreements with the Soviet Union which would eliminate the necessity for all forms of espionage, including overflights. I see no reason to use this incident to disrupt the conference.

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Should it prove impossible, because of the Soviet attitude, to come to grips here in Paris with this problem and the other vital issues threatening world peace, I am planning in the near future to submit to the United Nations a proposal for the creation of a United Nations aerial surveillance to detect preparations for attack. This plan I had intended to place before this conference. This surveillance system would operate in the territories of all nations prepared to accept such inspection. For its part, the United States is prepared not only to accept United Nations aerial surveillance, but to do everything in its power to contribute to the rapid organization and successful operation of such international surveillance.

We of the United States are here to consider in good faith the important problems before this Conference. We are prepared either to carry this point no further, or to undertake bilateral conversations between the United States and the U.S.S.R. while the main Conference proceeds.

My words were seconded and supported by my Western colleagues, who also urged Mr. Khrushchev to pursue the path of reason and commonsense, and to forget propaganda. Such an attitude would have permitted the Conference to proceed. Mr. Khrushchev was left in no doubt by me that his ultimatum would never be acceptable to the United States.

Mr. Khrushchev brushed aside all arguments of reason, and not only insisted upon this ultimatum, but also insisted that he was going to publish his statement in full at the time of his own choosing. It was thus made apparent that he was determined to wreck the Paris Conference.

In fact, the only conclusion that can be drawn from his behavior this morning was that he came all the way from Moscow to Paris with the sole intention of sabotaging this meeting on which so much of the hopes of the world have rested.

In spite of this serious and adverse development, I have no intention whatsoever to diminish my continuing efforts to promote progress toward a peace with justice. This applies to the remainder of my stay in Paris as well as thereafter.

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17. TRANSCRIPT OF NEWS BRIEFING WITH JAMES C. HAGERTY, ANDREW H. BERDING, AND CHARLES E. BOHLEN, PARIS, MAY 16, 1960

[The White House press release]

Mr. HAGERTY. I will try to speak as loud as I can. Can the people in the back of the room hear me? I have a statement from President Eisenhower, which I shall read. The statement is presently being stenciled and will be distributed as soon as it is mechanically possible, by my office.

Mr. Berding and I are here. Also with us is Ambassador Bohlen, who was present at the meeting this morning and who will be available for questions and a report on the meeting, after I finish reading the statement.

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I will read it through, not at dictation speed, but I will read it through so that you can get the sense of it, and by the time I am finished reading, the stencil should be available outside.

This is a statement by President Eisenhower. (Mr. Hagerty then read the statement down to the words, "on the following terms.")

What I will now read is what the President read at the meeting [see document No. 14] (and Mr. Hagerty continued reading down to "the main conference proceeds"). This is the end of the statement the President read this morning, but his full statement continues. (Mr. Hagerty read through the final paragraphs.)

That is the conclusion of the President's statement. (Most of the questions that follow, due to very poor hearing in the room, were repeated by Mr. Hagerty for the benefit of those present, but are as accurately as possible the actual words of the questioner.)

Q. How long will the President stay in Paris, Mr. Hagerty?

Mr. HAGERTY. I think that that would depend on what would happen tomorrow.

Q. Mr. Hagerty, did Mr. Khrushchev reply to Mr. Eisenhower's statement?

Mr. BOHLEN. Mr. Khrushchev made a partial reply to the President's statement, by reiterating the three points of his ultimatum. He indicated that the statement of the President that flights would not be resumed; he inquired whether this meant for the duration of the Conference, and the President said, "No." It was indefinite. He then repeated, however, that unless the United States would publicly renounce its past act and punish those which he said were immediately responsible for it, the Soviet Union still could not attend this Conference.

Q. Well, Jim, is the Conference over?

Mr. HAGERTY. I think that I could say—wait a minute—I think it was left wide open when the meeting broke up. If I may have a suggestion which I think would save our time and yours, it would be that if you have any questions on the statement as such, if we could get this out of the way now and then ask Ambassador Bohlen to give you a rundown on the meeting, and during the rundown I am sure quite a few of these questions that you are asking me would be answered. Would that be agreeable?

Q. Did the President have anything to say about the attack that Mr. Khrushchev had been making on Pakistan and other countries where United States bases are located?

Mr. BOHLEN. At the meeting this morning, he did not touch on that part of Khrushchev's statement. He did not go into the details of Khrushchev's statement other than those contained in his own statement.

However, in answer to the question, I think prior to this Conference, that the United States had made it plain that it would fulfill its obligations to any of its allies in the event of any attack or threatened attack.

Q. Did the British and French delegations take a stand on the American position?

Mr. HAGERTY. Did the—you mean the statement that I just read?

Q. And your statement of position——

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Mr. HAGERTY. I think Yes, but I would prefer to have that come from the British and French spokesmen, who are now giving their special briefings.

Q. Did Khrushchev make clear that he won't attend any bilateral meetings such as the President mentioned, that he won't be back tomorrow morning at Elysee Palace?

Mr. BOHLEN. I think the first answer to that question is an important one. At today's meeting, Mr. Khrushchev said he did not consider this a meeting of the Paris conference, this was a preliminary meeting to determine, in their eyes, whether the Conference could take place or not. He said the same thing in regard to any possible meeting tomorrow or in the next days.

Mr. HAGERTY. Again, if I can make a suggestion, I think it would be helpful if you would let Ambassador Bohlen, who was at the meeting as a Member of our Delegation, just run down through it. All right.

Q. The Russians are saying that they will have a press conference after the President replies. Now, what you just said here and what you said at the closed meeting earlier, may we consider this the President's final reply to Russia?

Mr. HAGERTY. How can you consider anything as final? The answer would be "No" to your direct question. Now do you mean if I am going to have another press conference today? Who can tell?

Q. Don't you think that Mr. Khrushchev wants to prevent a meeting of President Eisenhower and the Soviet people because he is afraid that the Russian people would welcome the President?

Mr. HAGERTY. Yes, I would agree with that, but that was not the point. Mr. Bohlen might want to answer that question directly on what happened on the invitation.

Mr. BOHLEN. In further elaboration of his statement canceling the invitation, Khrushchev said that the circumstances had changed as a result of this matter of the plane, that it would be hypocrisy for the President to come to the Soviet Union, the Soviet people were not hypocrites and that they would not be able to understand how you could invite the representative of a state whose planes had flown over the Soviet territory and one of which had been shot down by Soviet rockets.

He even said that he didn't know what he would say to his little grandson, if his grandson asked him that question.

In regard to your answer, this is your question, of course Khrushchev did not go into that angle of the thing, but I think it's a reasonable supposition.

Q. Thank you very much.

Mr. HAGERTY. And as far as the invitation or withdrawal of the invitation was concerned, in Mr. Khrushchev's statement this morning, the President did not answer it, but the fact that Mr. Khrushchev withdrew it, I think—the fact that Mr. Khrushchev withdrew it, prevented the President from refusing to accept. [Laughter].

Q. Will you repeat that, please?

Mr. HAGERTY. I said the fact that Mr. Khrushchev withdrew the invitation prevented——

Mr. BOHLEN. (to Mr. Hagerty) : No objection of the President.

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Mr. HAGERTY. There was no objection on the President's part and it just meant that he did not have to refuse to accept the invitation.

Mr. BOHLEN. The President did not refer at all to that part of Mr. Khrushchev's statement, dealing with the cancellation of the invitation.

Mr. HAGERTY. I would still like to have Mr. Bohlen, who is present [laughter]——

Mr. BOHLEN. I will try and hit, gentlemen, the highlights of this meeting, since it went on for quite a while, as you know. And I think the first point I have already made, that Mr. Khrushchev made it perfectly plain that he did not regard this as his attendance at the Conference, this was a preliminary meeting to see whether or not, as he put it, conditions could be established which would permit them to stay. He read his statement which lasted at least a half hour, and more with the translations—close on to an hour with the translation—was followed by the President's statement.

Mr. Macmillan, and while I think Mr. Hagerty is right, that he would wish to brief it, but I think this was important because both General de Gaulle and Macmillan urged Khrushchev to adopt an attitude which would make this Conference possible. Mr. Macmillan pointed out that their reference to any threat had been completely removed by the present statement that these flights had been suspended and would not be resumed. Mr. Macmillan also made the point that all espionage is in effect violation of sovereignty, and that unfortunately espionage was an unpleasant fact of life, but that he did not see how you could make too much distinction between one form of espionage and another since the great majority of any form of espionage constitutes a violation of national sovereignty.

General de Gaulle, as I say, was trying to counsel moderation on Mr. Khrushchev. He proposed there should be at least a day's recess while there might be an opportunity to see what could be done. He urged upon Mr. Khrushchev not to make any final decision.

In reply to Mr. Khrushchev's question, as I had already said, the President made it clear that this suspension of flights was not just for the duration of the Conference. Mr. Khrushchev ignored this and put out his statement, as you all know, publicly, which contains no reference to the fact that the President had made this important statement.

General de Gaulle pointed out that incidents like this of the plane were in effect the result of the tensions that this Conference had been called upon to deal with. He thought that its very happening, which was in the past, had highlighted the importance of addressing themselves to the subject on which they had come to Paris for. He pointed out that as a matter of commonsense, the time was not far distant when the satellites in orbit would open the skies over all countries, and even mentioned that there was a Soviet satellite launched yesterday, which was crossing France eighteen times a day.

None of this seemed to shake Mr. Khrushchev in his fundamental position, and he announced that he intended to publish this statement at a time of his own choice, and that he could not do otherwise.

He made one interesting reference—interesting to me—when he said that this was a matter that involved deeply the internal politics of

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the Soviet Union, a matter which he said was of great importance to them. He stressed the fact that, as he termed it, the United States policy had been made public on this, ignoring the President's statement about the suspension of the plane flights, and that consequently a public statement would have to be issued by the United States, and this statement included not only the question of suspension of the flights but also a denunciation of what had already happened and an expression of regret that this had occurred. The President's statement makes plain this was not acceptable to the United States.

And also the third point was the punishment of those directly responsible, as stated in his own statement this morning.

The matter was left in some obscurity. Up to the time of Khrushchev's announcement of his determination to publish this thing and publish it in full, there had been some consideration along the lines of General de Gaulle's statement of providing—suggestion as Presiding Officer that they should take a recess, should see what might be done through bilateral or other forms of discussion, that he would stay in contact with the delegations and then later on would determine whether to call a session of the Conference.

It was again at this point that Khrushchev pointed out that he did not consider this the Conference, that these were preliminary meetings and not the Conference itself. After he insisted upon publishing this, both Mr. Macmillan and General de Gaulle I think questioned what was going to happen, whether or not a meeting would take place tomorrow, or when, and I would say the matter was left in complete abeyance.

Both General de Gaulle and Macmillan pointed out that if this statement was made public, it would be the taking of a decision of the type which General de Gaulle had urged should not be taken, except after mature and due consideration during the recess.

Q. What is your view? Are you ready for questions?

Mr. HAGERTY. Yes.

Q. Can you tell us why——

Q. What is your view of the significance of Mr. Khrushchev's comments about the internal politics of the Soviet Union?

Mr. BOHLEN. It struck me only that I never, at any previous conferences, heard any reference of this kind made. I think anybody can draw their own conclusions from it. I don't propose to speculate on what might be in Mr. Khrushchev's mind, but only say this is the first time I have heard a reference in exactly those terms made in any conference with the Soviets.

Mr. Khrushchev provided a few highlights which I might mention to you, one of which during discussion he raised both his hands—on the subject of innocence in regard to espionage and the friendly feelings towards all countries—he raised his arms above his head and said: "As God is my witness, my hands are clean and my soul is pure." [Laughter.]

Q. Mr. Ambassador, is there going to be a Summit Conference?

Mr. BOHLEN. Well, it depends on whom you are talking to. As far as Mr. Khrushchev is concerned, there hasn't been any. I think—and I don't want to speak for our Western colleagues, but we would consider this was a meeting of the Summit this morning. As to what happens in the future, I just don't know.

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Q. Mr. Bohlen, is it your feeling that Mr. Khrushchev intends to call off the nuclear discussion, the test ban, and the disarmament discussions, as well as the Summit Meeting?

Mr. BOHLEN. I don't think we can answer that yet. There have been two conferences going on at Geneva, the ten-nation disarmament conference and the nuclear testing thing which has been going on for over a year and a half. We have not yet heard whether the Soviets are going to pull out of those yet.

Q. Can you tell us anything about any further meetings the President will have this afternoon or this evening?

Mr. HAGERTY. Well, first, of course, when he returned to the American residence, after the conclusion of the Summit Meeting, he had a meeting with all of the members of the American Delegation. And he and they, with Ambassador Bohlen and Mr. Berding and myself, were working—and he was working—on this statement that I have just read to you. There is a meeting, and I think it started at four or shortly thereafter, of the Western Foreign Ministers at the Quai D'Orsay, which is probably presently in progress, and that is all the meetings I know of at the present time.

The President is at the residence, and intends to stay there, but I do not know of any meetings scheduled for him other than those with his own people at this time.

Q. Jim, did Mr. Khrushchev make any other references to political conditions in the United States beyond the remark in his prepared statement, which we have?

Mr. HAGERTY. Well, I will ask Mr. Bohlen to answer that. He was at the meeting.

Mr. BOHLEN. I don't think he did. I just haven't seen—I heard him make it, but I can't quite recall whether the reference to his visit to the United States is included in his published statement or not——

Mr. HAGERTY. Yes it is—Yes.

Mr. BOHLEN. He did—it was, yes—about how much he enjoyed it. Then he didn't add anything about the United States except what is in his statement.

Q. Mr. Bohlen, did we offer to make the statement public that the flights would not be resumed during this period of discussion, when it still wasn't clear whether he was going to publish his own statement?

Mr. BOHLEN. This statement actually did not come up, but I would say it is a fair inference that the statement at the Conference could have been made public. But I would like to emphasize in this, in commenting on it, Mr. Khrushchev said that they had heard this with some satisfaction. However, they noted that there was no denunciation of the past act, no expression of regret, and no indication of willingness to punish, as he put it, those immediately responsible for these overflights.

Q. Mr. Bohlen, did Mr. Khrushchev in any way indicate what is going to happen to Captain Powers?

Mr. BOHLEN. No, he did not. Captain Powers' name was not mentioned this morning at all.

Q. Was there any reference, Mr. Ambassador, to the German problem and the possibility of a German peace treaty now?

Mr. BOHLEN. No, the only one is the one contained in his statement.

Q. Mr. Ambassador, what was the attitude of Mr. Khrushchev?

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Was he fiery angry or was he noncommittal, or what was the atmosphere of the meeting?

Mr. BOHLEN. I think he certainly wasn't noncommital, if you read his statement. [Laughter.] He seemed to me to be rather ill at ease, not particularly in his manner of expression, or excited. But I would say he was under some feeling of tension. He seemed to pay a great deal of attention to Mr. Gromyko on one side and to Marshal Malinovsky on the other. The atmosphere of the meeting was very—certainly wasn't cordial. It was not excited, but it was cold and businesslike.

Q. How did President Eisenhower take to Khrushchev's statement, Mr. Ambassador?

Mr. BOHLEN. I think the President's statement in response gives you the answer to that.

Q. I mean, physically?

Mr. BOHLEN. Oh, there were no signs. The President has been around a great deal and he didn't show any signs one way or other on his face when he heard this.

Q. Will the President go to the Palais de Chaillot tomorrow at 11 o'clock?

Mr. HAGERTY. The Palais de Chaillot?

Q. To the President's Palace?

Mr. HAGERTY. I think the only thing I can say on that is what we have said two or three times, we will have to wait and see.

Q. Jim, will the President still go to Portugal as scheduled?

Mr. HAGERTY. Gee—you know, we haven't talked about that at all today. [Laughter.] I just don't know, Smitty.

Q. Mr. Ambassador, has the recent expulsion of the two Soviet spies from Switzerland been mentioned?

Mr. BOHLEN. No, the only reference to espionage was the one in the President's statement, and the one I mentioned in Mr. Macmillan's statement, who said it was an unpleasant fact of life that all—most forms of espionage involved violation of national sovereignty.

Q. Does the statement by the President this morning represent any change of attitude on the part of the United States toward flights over the Soviet Union?

Mr. HAGERTY. I think his statement pointed out that there had been misunderstanding on this and that both on May 11 and on May 9 I believe the date is, referred to in the statement, these statements we thought were made clear, but there had been misapprehension on one key point.

Q. Then the right to such flights is maintained?

Q. Can I ask a question? Was it not previously denied in Washington that the President had ordered a cessation of overflights, as reported by Mr. Reston in the New York Times?

Mr. HAGERTY. The story that you are referring to, I made the remarks, the story as written was not correct.

Q. But the right to make the flights is maintained?

Mr. HAGERTY. The right to make flights is maintained? I don't know what you mean by the right to make flights?

Q. The right of espionage? [Laughter.]

Mr. HAGERTY (indicating). That's my answer.

Q. Mr. Bohlen, could you possibly say in what order the statements were made?

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Mr. BOHLEN. Yes. Khrushchev spoke first. De Gaulle opened up as host and said that yesterday he had received the information concerning the Soviet position from one of the participants, Mr. Khrushchev, and he had made this known to his other two colleagues, and he wondered if anyone had anything to say.

Mr. Khrushchev jumped in and said, "I have something to say," and said it.

Q. Was there any informal exchange between the two men—between Eisenhower and Khrushchev?

Mr. BOHLEN. No, there was not.

Q. Did they shake hands when they came in?

Mr. BOHLEN. No, they did not. When the President came in, Khrushchev was already seated at the table, and the President just took his place at the table.

Q. How did the scene end up, Mr. Ambassador? Did they say goodby to each other informally, or did they just walk out without speaking?

Mr. BOHLEN. They just walked out.

Q. Has the machinery been set up, or is it being set up now to arrange a bilateral meeting, between Mr. Khrushchev and Mr. Eisenhower, and if so, who is operating that machinery?

Mr. HAGERTY. No, I don't know of any at the present time. The statement that has been made by the President at the meeting—let me see where it is—on the last page: "We are prepared either to carry this point no further, or to undertake bilateral conversations between the United States and the U.S.S.R. while the main conference proceeds." The President made the offer. We have heard nothing from the Soviets.

Q. May I ask——

Q. Did Mr. Khrushchev propose to adjourn the Conference for 6 to 8 months with some kind of pledge at this time not to change the situation in Berlin?

Mr. BOHLEN. There was no such pledge.

Mr. HAGERTY. The question was did Mr. Khrushchev make any pledge, was it?

Q. No, is the Ambassador considering a proposal of some kind of pledge——

Mr. HAGERTY. Is the Ambassador considering—what proposal, sir?

Q. To adjourn the conference.

Mr. HAGERTY. The proposal to adjourn the Conference, does this change the situation on Berlin? Is that——

Q. *Not* to change?

Mr. HAGERTY. Not to change the situation—I am sorry—it is difficult to hear here.

Q. Yes. I beg your pardon for my bad English.

Mr. HAGERTY. No, no, I understand.

Q. The question was whether President de Gaulle (?) is considering recent proposals to adjourn the Conference for 6 or 8 months with some kind of pledge that he during this time will not change the actual situation in Berlin?

Mr. HAGERTY. In proposing to end this Conference here and have another one at some time in the future, 6 to 8 months, as Mr. Khrushchev says, does this mean that Mr. Khrushchev will change his position——

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Q. Will not?

Mr. HAGERTY. Will not change his position—I am sorry—on Berlin?

Mr. BOHLEN. I don't think it's possible to draw any inference from that statement. He made no reference to Berlin at all, except the one in his published statement. Therefore, I don't think that you can read into this one way or other, it's merely what he said, let's have another—the conference, maybe in 6 to 8 months. He did say—you asked if there was any reference to the internal thing—I think this is in his statement when there would be a new American government.

Q. Ambassador Bohlen, did either Khrushchev or de Gaulle or Macmillan comment in any way on the President's suggestion on United Nations surveillance?

Mr. BOHLEN. The only one who did was Khrushchev, who said that the Soviet Union is sovereign over its own airspace and no one—and he repeated no one—will be permitted to infringe on it. If you ever got, he said, complete disarmament when there were no arms whatsoever, then you could have open skies, open earth, and open water. But until that happens, no one—and he repeated no one—would be permitted to fly over the Soviet Union.

Q. Mr. Hagerty——

Q. Jim——

Q. Jim, can you tell us why it was, or give us the background, the fact that these flights were suspended and were not to be resumed—why that was not announced, in view of the misunderstanding you mentioned?

Mr. HAGERTY. Well, I thought that it was, by some of our people in our Government, in some conversations that they have been having, but that's the only answer I can give.

Q. Mr. Ambassador, is it correct that prior to Mr. Khrushchev's clean hands and pure soul statement, there had been no detailing of any kind as to Soviet espionage in the West or the United States?

Mr. BOHLEN. There was no detailing of it, but the President's statement, which has just been read by Mr. Hagerty, said: "As is well known, not only the United States but most other countries are constantly the targets of elaborate and persistent espionage of the Soviet Union."

Q. Mr. Hagerty, do you know whether—if the United States delegation is prepared to counterattack against the Soviet Union on a propaganda basis on the matter, or rather try to calm down the situation?

Mr. HAGERTY. Well, in the first place, I think that propaganda speaks for itself, and I refer you to the President's statement as far as propaganda is concerned here—at this meeting. I think what we tried to do is—on the second part of your question, I think that this is also handled in the statement, where the President says that "In spite of this serious and adverse development, I have no intention whatsoever to diminish my continuing efforts to promote progress toward a peace with justice. This applies to the remainder of my stay in Paris as well as thereafter."

I think those words speak clearly in answer to your statement.

Q. Mr. Hagerty——

Mr. HAGERTY. Yes, sir.

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Q. Will you tell us when the three Western chiefs of government will get together and decide their next move?

Mr. HAGERTY. I can't tell you now. I would think that this is one of the reasons the Foreign Ministers are meeting this afternoon.

Q. With the Russian Foreign Minister present, or only the three Western——

Mr. HAGERTY. No, I said the three Western Foreign Ministers are meeting this afternoon.

Q. Did Mr. Khrushchev acknowledge in any way Mr. Eisenhower's statement that overflights will be discontinued?

Mr. HAGERTY. I thought Mr. Bohlen had answered that.

Mr. BOHLEN. Yes, he did, and he said they had some satisfaction on this, but pointed out that the other points of their demands still remained unanswered or unaccepted.

Q. Thank you.

Mr. HAGERTY. Okay?

Q. Thank you.

Mr. HAGERTY. That statement is mimeographed and on the tables outside the hall.

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18. COMMUNIQUE, MAY 17, 1960

[White House press release]

The President of the United States, the President of the French Republic and the Prime Minister of the United Kingdom take note of the fact that because of the attitude adopted by the Chairman of the Council of Ministers of the Soviet Union it has not been possible to begin, at the Summit Conference, the examination of the problems which it had been agreed would be discussed between the four Chiefs of State or Government.

They regret that these discussions, so important for world peace, could not take place. For their part, they remain unshaken in their conviction that all outstanding international questions should be settled not by the use or threat of force but by peaceful means through negotiation. They themselves remain ready to take part in such negotiations at any suitable time in the future.

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19. TRANSCRIPT OF PREMIER KHRUSHCHEV'S NEWS CONFERENCE, PARIS, MAY 18, 1960

[From the New York Times, May 19, 1960]

Paris, May 18 (Reuters).—Following is the official English translation of the text of Premier Khrushchev's prepared statement at his news conference here today:

Ladies and Gentlemen.

You obviously know the statement which I made on May 16 to President de Gaulle of France, Prime Minister Macmillan of Great Britain and President Eisenhower of the United States.

The circumstances under which the Soviet Government deemed it necessary to make this statement are generally known. I have in view

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the aggressive flights of American warplanes over the Soviet Union, undertaken on the eve of the summit conference, and the public declaration of the United States Government that such flights are its official policy.

Now attempts are being made to lay the blame on us for the alleged refusal of the Soviet Union to take part in the meeting and for making some sort of ultimatums to the United States.

But we have declared and we declare that we are ready to take part in the conference if the United States Government makes up publicly for the insult inflicted upon our country by its aggressive actions. However, we are still not sure that the espionage flights, which are undertaken by the United States, will not be repeated.

Just recall the behavior of the United States leader, after they were caught redhanded. I shall refer to documents, and documents alone.

U.S. VERSION IS RECALLED

On May 5, when all the world learned that an American warplane was brought down over Soviet territory, the Department of State declared that it was an aircraft which flew over Turkey to collect meteorological information. It was claimed also that the pilot radioed back that he had trouble with his oxygen equipment. As a result of this, the pilot allegedly lost consciousness and the plane, steered for quite a time by its automatic pilot, could have accidentally intruded into the Soviet airspace.

It was reported that a search was carried on for this plane in Turkish territory around Lake Van, where the terrain is very mountainous.

When we announced that the American plane had been shot down in the area of Sverdlovsk and that the captured pilot had owned up to being a spy, the United States Secretary of State Herter said on May 9 that it was indeed a spy plane.

More, he said that such flights were being made on the President's instruction and in accordance with a program which provided for extensive aerial surveillance, including "by penetration" of the Soviet airspace. It was a brazen statement on the part of Mr. Herter.

On May 11, President Eisenhower himself confirmed Herter's statement.

On May 12, the United States Embassy in Moscow, in its note to the Soviet Government, again said that aggressive espionage flights were a calculated policy of the United States.

And now, in Paris, the President of the United States issues a statement to the effect that the United States has "suspended" its flights and will not resume them.

Some people ask, referring to this statement: What else does the Soviet Union need? It would seem that the threat of flights by American military planes over the Soviet Union is thus removed.

"SERVITORS OF IMPERIALISM"

Such a statement may have satisfied the servitors of imperialism. The imperialists have grown accustomed to behaving like Russian merchants did of old: they painted the lackeys' lips with mustard, and the latter said, "thank you" and bowed low.

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We will not tolerate insults, we have our pride and our dignity. We represent a mighty Socialist state.

But then Eisenhower said at the preliminary meeting on May 16 that what he had meant by his statement about the suspension of overflights by American military planes was that they would not be resumed for the remainder of his tenure as President.

He said he did not know, naturally, what decision the next President would take. Thus, what the President of the United States promises is not renunciation of aggressive policy, but merely a temporary "suspension" of flights till January, 1961.

It is not for a long period that Mr. President promises us to discontinue the provocative policy of espionage flights. But international relations cannot be built on the term of office of this or that official, for what would then be the worth of any international agreement.

If we followed the American President's logic, it would be impossible to negotiate on, say, disarmament. An agreement may, conceivably, be signed today, but lose force tomorrow and be thrown into the wastepaper basket because the person who signed it would leave his post.

To hear President Eisenhower, it would seem that the question of whether American military planes will or will not overfly the U.S.S.R. depends on him and him alone.

Just think, what presumption! He now says they will not overfly. What magnanimity!

Of course, it is for President Eisenhower to decide whether to send or not to send his planes. But it is another question whether they will be able to overfly our territory. This is decided by us, and very definitely for that matter—we shall shoot these planes down, we shall administer shattering blows at the bases whence they come and at those who have set up these bases and actually dispose of them.

The point in question, therefore, is not some sort of "favor" to the Soviet Union on the part of President Eisenhower. We do not ask "favors" of the United States Government, but honest condemnation of the bandit flights of American intelligence planes.

However, President Eisenhower did not utter a single word of condemnation with regard to the provocative policy against the Soviet Union, on the strength of which the spy flights were undertaken.

Can such a statement by the President satisfy anyone but the aggressor himself?

Eisenhower's statement that he has suspended these provocative flights for the term he remains in the White House is not a confession, not even a semi-confession, but an attempt to dodge confession and consequently responsibility for his aggressive actions. But subterfuges and even semi-confessions of political leaders have never helped them to avoid historical responsibility. Even the children are told: If you do something bad—own up and say you "won't do it again." In government affairs, it is even more important to make complete confessions and draw all the necessary conclusions.

PREMIER VOICES SURPRISE

The Soviet people, public opinion in our and all other peaceful countries, would not understand us if we contented ourselves with the

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American President's dodges and the "favor" he "graciously" did us by stopping flights over the Soviet Union till January, 1961.

Nor could we fail to be surprised by Eisenhower's statement, which looked like a threat that he planned to submit to the United Nations a new "open skies" plan.

After the Pentagon had realized that the Soviet skies were closed to American spy planes, the people there apparently decided to send planes with the same aims but under the United Nations flag. It is to be hoped that the United Nations is not an American state, not a branch of the Pentagon, and will decline this humiliating role.

Some of you say in your dispatches that flights by American air pirates over the Soviet Union are only a "small incident." You represent here the press of various states, and I would like to ask you what would you think of your government if it treated with indifference, with unconcern, the overflights of your cities by military planes of countries of which you yourselves sometimes write as potential opponents?

Would you respect such a government? Would your families and you yourselves feel safe listening to the drone of an alien military plane over your heads?

But the Soviet people have as much right to think in this way, the more so since the peoples of our country have vivid memories of two murderous wars imposed on us from without, two wars which took a toll of tens of millions of lives.

NEW COURSE DISCERNED

It is indicative that the governments of the countries that have rashly lent their territories for the preparation and carrying out of aggressive spy flights over Soviet territory, are now compelled to right themselves in this or other measure before public opinion and disavow the actions of the American military. They, apparently, have begun to realize--and we are sure that this will soon be realized by everybody who opened their land for the establishment of American war bases—that such things are not to be trifled with.

The Soviet Government regrets that it was impossible to hold the conference now, but, as I have already said, it could not act otherwise. We have done everything to prepare well the heads-of-government meeting, but some hotheads in the United States of America have torpedoed it even before it could be opened.

I repeat, gentlemen, the Soviet Union is firmly for peaceful coexistence, for talks, for the reaching of reasonable, mutually acceptable agreements.

We shall work in this direction, confident that our peace-loving policy meets with the sympathy and understanding of all nations, and we should like to believe that the Western leaders will also strive toward this end, that within six or eight months we shall again meet with our partners in a new, more favorable atmosphere, if they show interest and agreement to have this meeting, if they create the necessary political atmosphere for it, for the discussion and settlement of urgent international problems—that is, if they do not undertake provocations against the Socialist states.

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WE CANNOT BE BENT

This can happen even sooner, but only if everybody realizes that no one will be able to intimidate the Soviet Union, the Socialist states, by any provocative actions whatsoever! We cannot be bent!

Negotiations and agreements with us are possible only on the basis of equality, without threats or blackmail.

I should like to thank the President of France, General de Gaulle for enabling the heads of government to meet in Paris, for the efforts he made so that the summit should take place, so that our meetings should be held as agreed upon and conform to the aims for which we have come here.

Today I paid a farewell call on the President of France. We exchanged our views, and I am happy to say that a common striving was revealed to continue to exert efforts for the development and strengthening of our relations in every way. I welcome this and I express my satisfaction that the President and I agree on this most important question.

I should also like to express my gratitude to the Prime Minister of Great Britain, Mr. Macmillan, for his understanding and the efforts he made so that the summit meeting takes place.

And yet, I cannot fail to express some regret as well. If the President of France and the Prime Minister of Great Britain assumed the position of the objective appraisal of facts instead of yielding to their Allied ties, if they displayed more will, the leaders of the United States might perhaps have been obliged to condemn their aggressive actions, and conditions would thereby have been created enabling the summit conference to take place and yield the beneficent results hopefully awaited by all the peoples of the world.

I thank you for your attention, gentlemen, and I am now ready to reply to your questions.

PARIS, *May 18 (Reuters)—Following is the transcript of Premier Khrushchev's news conference here today, held after he made his prepared statement, with the Premier's remarks and those of non-English-speaking correspondents in unofficial translation:*

Ladies and gentlemen, I want to ask your pardon but I want to address myself to that little group in the hall that is booing.

I have already been informed that Chancellor Adenauer has sent some of his riffraff that escaped the beating at Stalingrad and it is they that are indulging in this booing, they that we did not at that time send three meters underground.

Look to it, if you were not beaten at Stalingrad and in the Ukraine, we will give you such a boo that you will lose any desire to come into the hall and boo again.

Ladies and gentlemen, I want to draw your attention to the fact that they are reacting to my words without even listening to the translation.

They understand. These are the plunderers who came to the Soviet Union to plunder and pillage and they carried away their hands—they carried themselves away from the Soviet Union. They escaped a beating.

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REPRESENTS SOVIET PEOPLE

The most important thing here is that you are all wise people, and you must certainly understand who is standing before you. I represent the great Soviet people, a people that has won victory in the Great October Revolution under the leadership of the great Lenin, a people that is now successfully building a Communist society, that is confidently marching forward to communism.

And you, this little group, represent those people of whom the Germans themselves will in time be ashamed. I am speaking of this German riffraff and not of the great German people.

Their booing heartens me, heartens and gratifies me because in the words of a great representative of the German people, August Bebel, "If your enemies are attacking you, then know it. Bebel, you are on the right track."

And if you boo me then this adds confidence to me and I understand that I, too, am on the right track.

I shall not conceal *my* pleasure. I like coming to grips with the enemies of the working class and it is gratifying for me to hear frenzy of these lackeys of imperialism. Nothing they attempt to do will gain them any good. The Soviet Union, firm as a rock, is marching forward to build communism and will continue to march forward till the complete triumph of communism in the Soviet Union.

Now thank you for your attention, Ladies and Gentlemen, I shall do my best to answer to the full any questions that you may have to ask me.

VIEW ON GENEVA TALKS

DAILY SKETCH, London. Can Chairman Khrushchev say if the Soviet Union will continue the talks on disarmament and on the suspension of nuclear tests?

A. We shall continue our negotiations in Geneva. The American imperialists have received some clarification of late. They received an eye-opener in Sverdlovsk. And if they understand that, then there is a possibility to reach agreement on the discontinuance of tests. But if Eisenhower threatens that he will continue testing, then we, too, will follow suit until the whole world learns who are the true guilty parties and who is resisting agreement. We at any time are ready to sign such an agreement.

The disarmament negotiations are another matter altogether. We are almost convinced that our partners in these disarmament negotiations do not want disarmament but want simply control over armaments, which is in other words the collection of espionage information. We will not agree to this. We are for true disarmament, for true control measures, so that no one should threaten any one else.

What is going on now at Geneva is merely procrastination. But if this procrastination goes on, we will be compelled to approach the United Nations and to say that our partners do not want to reach agreement and that we are asking the United Nations General Assembly to consider the matter.

INSISTS ON ASSURANCES

BRIDGEPORT HERALD (Connecticut). If your allegations regarding the U–2 incident are true or even worse, don't you think that as the

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great leader of a great state and knowing that truth is on your side it would be better to have the summit conference now than in six or eight months' time, considering the state of tension?

A. Yes, we are in favor of holding a summit conference. That is why we came to Paris. But the United States must admit its aggressive intrusion, must condemn its act, give assurances that such acts would not be repeated and must punish the guilty party. Then, if it had done so, we would be satisfied and we would have taken part in the summit conference, to seek correct solutions for the questions confronting it. But the United States refused to do this.

How then are we to negotiate with an aggressor, with a state that has committed aggression, and on the contrary is saying that these flights are United States policy?

Ladies and Gentlemen, we all have mothers. You all do, too, otherwise you couldn't have come into this world.

I remember during my youth I was born in a very poor family and it was only very rarely that my mother could buy us some cream. But sometimes when she did our cat would creep up and eat some of the cream, would steal some of the cream. Then my mother usually took the cat by the scruff of the neck and gave it a good shaking and in the end would poke its nose into the cream to make it understand that such stealing was not allowed.

Wouldn't it be better, Ladies and Gentlemen, to take the American aggressors by the scruff of the neck also and give them a little shaking and make them understand they must not commit such acts of aggression against the Soviet Union?

PEACEFUL MEANS AFFIRMED

DIE WELT, Hamburg.—Do you still consider that international issues should be resolved by peaceful means?

A. Yes, I reaffirm that our policy has always been to solve disputed issues not by means of war but by peaceful negotiations. That is the policy we have always adhered to and continue to adhere to now.

Q. Do you still adhere to your former proposal regarding the transformation of West Berlin into a free city?

A. Yes, I still adhere to this policy and we see no other reasonable way out. West Berlin is situated in the center of the German Democratic Republic, which is a Socialist republic, whereas the system in West Berlin is a capitalist one.

These two systems are antagonistic and this is always fraught with a conflict. Why should we have such a situation? Wouldn't it be better to take a better decision, that is to insure West Berlin a free city status, withdraw all foreign troops and make it possible for the inhabitants of West Berlin to choose the social system under which they want to live, the one which satisfies them the most, and, of course, on the condition that they are assured freedom of external ties with the world.

This recent conflict with the United States aircraft convinces us all the more that these questions must be solved as we are approaching the matter with ever greater resolve and urgency. By the way, tomorrow I am flying to Berlin. We will talk with our comrades, Ulbricht and Grotewohl, and in general with our friends in the German Democratic Republic.

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QUESTIONED ON PEACE PACT

DER TAG, Berlin.—Do you intend to conclude a separate peace treaty in Berlin? (There were additional shouts of "and when?")

A. Yes, we do intend to sign not a separate peace, but a peace treaty with the German Democratic Republic and thus to put an end finally to World War II. In that case, the Western powers will be deprived of their occupation rights, the right to maintain their troops in West Berlin. When? That is our business. When we consider the time to be right, we will take our fountain pens from our pockets—the necessary drafts have already been prepared and the drafts will be—we will sit down and sign the peace treaty and announce it to the world.

I would like to add we are simply intending to do what the United States did with regard to Japan.

We fought in the war together with the United States against Japan. But the United States signed a peace treaty with Japan. But we didn't. We are exerting all efforts to prove the necessity to sign a peace treaty together, but we have now almost reached the limits of our patience and of our effort to have a peace treaty signed together and when we do reach the limit we will sign such a treaty by ourselves just as, I repeat, the United States did with regard to Japan.

RECALLS CAMP DAVID MOOD

NATIONAL BROADCASTING CO.—Why, since you knew about these flights, did you not tell President Eisenhower about them and ask him to stop them when you visited the United States?

A. I will answer that question with pleasure. When we were talking in Camp David with President Eisenhower I almost opened my mouth to make that statement.

I was on the point of making it because the atmosphere there was so convivial with President Eisenhower telling me to call him "My friend" in English and using the same words with regard to myself in Russian. And then, thought I, why not raise the matter with this friend of mine.

But when I became apprehensive and I thought there was something fishy about this friend of mine and I didn't broach the subject and it turned out that I was right, because when we caught them red-handed they say they are not thieves, it's just their thief-like policy. That is all.

This recalls to my mind what we used to do in the Donbas when I was the young boy. Whenever we caught a cat in the pigeon's loft, we would catch the cat by its tail and bang its head against the wall and that was the only way it could be taught some sense.

HIS CHOICE FOR PRESIDENT

COLUMBIA BROADCASTING SYSTEM.—Since, because by desire or not, you have become a factor in the American political campaign, would you care to say which President you would prefer to deal with?

A. I thank you for that question. It is a good question, although rather a difficult one to reply to. Nevertheless, I will try to reply.

When I was in the United States, I talked with very many Americans, ordinary people, with people who are wealthy, with representatives of the capitalist world, the statesmen, the farmers. And I re-

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tained very good and, I may even say, pleasant memories of my conversations with most of these peoples.

People everywhere are just like people and they all want peace. Perhaps they understand it in their own way, but that should certainly not be the ground for any conflict. Perhaps they don't agree with my understanding and I don't agree with their belief that the capitalism system is better. But that certainly should not be the object of any conflict and, all the more so, of a war.

I am sure that the majority of Americans regret the act perpetrated by the American Air Force.

It is true there are some Americans who have been kidded into indignation against the acts of the Soviet Union but to this I can but reply, how would they themselves feel if we were to fly our aircraft over their country.

But they would certainly come to the conclusion that such flights are absolutely inadmissible, that this can only end in aggression, can only bring about a war.

Regarding the question of who, in my opinion, will become the United States President, there certainly was a person to my liking, a person with whom I am sure we could have reached agreement.

He was a great American, his name was Roosevelt and he was a worthy representative of the capitalist society, but we cooperated with him very well indeed during World War II. When he died his policy died with him.

But we are convinced that persons will come to power in the United States who will pronounce themselves in favor of reaching mutually acceptable agreements.

We have nothing to quarrel about with the American people. They are in favor of capitalism, that is their business and even then it is not all the American people who are in favor of capitalism because many of them are simply under the oppression of the capitalistic system.

But let them come, why doesn't everyone come to the Soviet Union and see for themselves what kind of a life we are now leading.

Let even those who have been booing here come. We'll give them visas, too, and perhaps even they will see the light if they come.

Our country is now second in the world in its industrial production, in science and in culture. If I don't perhaps modestly say that we are first in the world, we certainly do occupy a worthy place in human society.

But I do not want to interfere in the American political scene. We should maintain an attitude of patience and not try to forecast who will come to the fore in the United States elections. The American people will themselves elect their worthy representative as President elect someone who would not understand the necessity of reaching agreement we can wait we have waited and we wait and, if the next President doesn't understand that, we can wait some more. We don't need to hurry, we have long ago chosen the correct path. We have long ago determined the correct line of our development and we are convinced that our choice was made correctly and we are marching confidently ahead to the building of a Communist society.

You, perhaps, in time will also understand that this is the only true road and perhaps you, too, will join this road but even then you will

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not even be parallel with us, you will be lagging behind and trailing in our wake. But we don't hold that against you, we'll help you to catch up and share our experience with you.

COMBAT, Paris. Mr. Chairman, you agreed to come to France, despite the facts of the U–2 incident and knowing of the categoric position taken by America. Were you convinced that France might possibly take up a position of appeasement? Why in this case have relations not relaxed despite the intentions and the actions of General de Gaulle? Do you think, nonetheless, that these actions have served the cause of peace?

A. Naturally we knew of the plane incident, in fact, I reported on it in my speech at the Supreme Soviet. Why then did we come here? Because we thought that perhaps the United States might be stricken by some honesty and apologize for its actions.

All the more so that in the recent past the United States apologized to Cuba when an American plane was shot down over that country.

Then why shouldn't they apologize to the Soviet Union? Well, that is what we thought, evidently we were mistaken. It was evidently one thing to apologize to Cuba and another thing to apologize to a Socialist country.

Well, that is their business. It's simply a matter of upbringing, a matter of manners and honor. Regarding the position taken by General de Gaulle. Yes, he did do all he could but nothing came of his efforts.

Why? Well, I can only refer the correspondent who asked that question to General de Gaulle because it was the general who talked the matter over with President Eisenhower and so he knows his reaction. I don't.

As to the results, well, my opinion is that even after a war when the enemy has been routed the people once again live in peace and friendship.

We had no war. What happened was only that someone tried to poke his nose into our affairs and we punched that nose so that now he certainly knows where the border is. If he comes again, he will receive another blow as will the bases from which he takes off and where he intends to land.

Actually, all this should be digested and the world should once again revert to peace and even more than that to friendship. I am convinced that that is the opinion entertained by President de Gaulle. But he, President de Gaulle, found himself in a very awkward situation. That is my opinion, I don't know, he may not agree with me. On the one hand, there was nothing he could do but condemn the action because he is a man of lofty moral principles and there can be no two opinions on this matter. This was a thief-like sally.

But on the other hand, the obstacle to this was that the thief turned out to be France's ally and not simply an ally but a leader in Western quarters.

But, I don't want to go into the details of this matter. It concerns the relationships between the allies. But speaking honestly, if it were an ally of ours that had acted in this way, we would say that that was a bad way to act and that the necessary apologies should be tendered.

Well, there you are, those are the moral principles of communism. I cannot answer for the moral principles of a capitalist society. I am a representative of a Socialist society.

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I would like to add to that, if I understand the question to have meant how relations between the Soviet Union and France would develop after this, then my opinion is that all this will have no impact on the good relations that exist between France and the Soviet Union and from the talk I had today with General de Gaulle I gained this same impression also, because I feel President de Gaulle also wants to continue a policy of improving relations with the Soviet Union.

We are certainly in favor of such a policy also, because we hold France in very high esteem as we do President de Gaulle, we esteem the French nation, the French culture, so we certainly hope that our relations with France, far from deteriorating, will improve.

BERLIN RADIO. It follows from American press reports that the American delegate Gates, has from here declared an emergency alarm to the American forces. How do you evaluate that act?

A.—I have heard nothing of that report yet, but I certainly have no reason to disbelieve what the correspondent said.

If this is really so it can be qualified as nothing short of a provocation designed to trick the Americans and impose more taxes on them. Perhaps also it can be explained by ordinary cowardice. Sometimes a coward is even more dangerous than a provocation-monger.

A provocation-monger is trying to provoke war while a coward can unleash war out of pure cowardice. I don't know this Gates. It's not for me to judge him. Let the Americans themselves see what sort of a person he is.

The person I can vouch for is Marshal Malinovsky, here, a hero of World Wars I and II, a man who fought valiantly against the German militarists and against Japan during the war, a person who has been often decorated for his outstanding services. There is a true son of a Socialist motherland. And, as he says, he has not been calling any alert nor does he intend to.

SOVIET POWER CITED

But if this action was designed to somehow prevail upon us, then some other country should be chosen as the target for such acts, because we certainly have every possibility of acting with regard to such provocations in the same way as we used to act with regard to that thieving cat which used to creep into the pigeons' loft. We can certainly teach it a lesson.

[A few minutes were lost here due to a power failure.]

I presume that the United States will attempt to raise the taxes in the country over this incident to try to increase their orders for military equipment—first to take more money from the pockets of the taxpayers and thus to gain greater profits out of armaments production.

Our policy is a completely different one. We have adopted, we have taken, the decision to abolish all taxation of the population by 1965. By that time no one in the Soviet Union will pay any taxes at all.

This year, we are completing the conversion of all the workers of the Soviet Union to a seven-hour working day. By 1964, we will have a six-hour working day for all the workers and employees of the Soviet Union and by that time the coal miner will have but a five-hour working day.

That is our policy, and no provocation will make us turn aside or make us swerve from that correct time that we have chosen. That is

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the true, the convinced, policy of the Soviet Union, a Socialist policy, the policy of our Communist party.

NEUES DEUTSCHLAND, East Berlin.—Mr. Chairman, what in your opinion is the reason for the change in the position of President Eisenhower since your talks in Camp David? Can you explain the reasons for the difference in the position of the United States in Camp David and now in Paris?

A. I believe the best reply to that question was contained in the preceding one, the one referring to the alarm, to the emergency alarm—in the alarm of American troops.

This shows that in the United States the most reactionary forces in the Pentagon are coming to the fore, and it is they who sent their planes on a sortie into the Soviet Union, naturally with the knowledge of the United States President. And this explains this piratical policy pursued by the United States.

JORNAL DO BRASIL. Three questions. Mr. Chairman: Do you intend to go to pay a visit to the Latin American countries in the near future?

Second, how do you, what is your appraisal of the Latin-American countries in the the present world situation? and third, can the Latin-American countries participate in the solution of outstanding world problems?

A. The reply to the first question is easy regarding any possible intention that I might have of visiting Brazil. Nobody has invited me to come.

LATIN VISITS POSSIBLE

But I am not losing hope of being invited to visit the countries of Latin America. If I am I shall gladly avail myself of that invitation.

As for Latin America, we are happy to hear the pulse of Latin America's struggle for independence against American imperialism. The welcome accorded to Nixon in Latin American countries was certainly an omen, a signal. And I can but welcome the events in Cuba, where the people proudly and courageously rose up under the banner for the struggle for their independence. I am convinced that the other Latin American countries will also rise up in the struggle for their independence. We will sympathize with their struggle and applaud their successes in this fight.

I am convinced that the peoples of Latin America are accumulating their forces and that they will play an ever growing role in international relations. Unfortunately there still exist in Latin America today countries whose governments are taking money from their people but are serving the interests of the American imperialists. But the Latin American people are awakening, and we welcome this process and sympathize with it.

It is only when the Latin American peoples have their own governments, governments that will express the will of these peoples, that these nations will be able to truly raise their independent voices in the international arena, including the United Nations, and this will certainly be to the benefit of all the countries of the world, to the benefit of the cause of peace.

Ladies and gentlemen, I could certainly be ready and willing to go on with this press conference longer, but the interpreters have intimated that their working day is over and that I should respect the

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labor code. Otherwise they say, "Chairman—Chairman." They say, "You better end your conference, or else we will end it without you."

I want to thank the Government of France, President de Gaulle, the entire French people and the citizens of Paris. And not only Paris. For yesterday, for example, we paid a visit to a village outside Paris that Marshall Malinovsky visited during World War I, when he was in the army.

I want to end by saying that the Soviet Union will continue to adhere to the policy of peaceful coexistence between two systems, the systems, that we will continue to pursue a policy of peace aimed at solving all questions at issue by negotiations. But at the same time, we will firmly stand, we will firmly defend, our sovereignty. This policy will, I am sure, be understood by all the nations, for this is the only correct policy, a policy of defending one's sovereignty without threats to any one. Good-by. I want to wish you all the best.

But at the same time, I want to voice the hope that you will work for peace, that your pen will serve the cause of peace and friendship among the nations. Thank you.

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20. COMMUNIQUE OF THE NORTH ATLANTIC COUNCIL, PARIS, MAY 19, 1960

[Department of State press release No. 274]

The Permanent Council of the North Atlantic Treaty Organization met in Paris on May 19, 1960, and heard statements from the Foreign Ministers of France, the United Kingdom, and the United States on the events which prevented the holding of the summit conference.

In the communique published at the end of its meeting in Istanbul, the North Atlantic Council welcomed the prospects of negotiations with the Soviet Union and expressed the hope that the negotiations would lead to an improvement in international relations.

It regrets that Mr. Khrushchev's position has made negotiations in Paris impossible.

Reaffirming complete solidarity of the countries of the Alliance, it fully approves the statement of the three Heads of State or Government that "all outstanding international questions should be settled not by the use or threat of force but by peaceful means through negotiations" and "remains ready to take part in such negotiations at any suitable time in the future".

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21. REMARKS OF PRESIDENT EISENHOWER ON HIS ARRIVAL AT ANDREWS FIELD, MAY 20, 1960

[White House Press Release]

My good friends and fellow citizens:

After a trip of this kind you can well understand what it means to me to have this kind of a welcome. I am deeply appreciative of the trouble that each of you took to come out to this spot. It truly means a lot to me.

As we planned for the Summit, the hopes of the world were not too high. The experience of the past years had denied us any right

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to believe that great advances toward the purpose we seek—peace with justice—could be achieved in any great measure. Yet, it seems that the identity of interest between ourselves and the Soviets in certain features was so obvious that logically we should have made some progress.

Certainly the subjects on which we wanted to talk were those that seemed so important to them—for example, disarmament; the widening of contacts so that we would have open societies, or slightly more open societies dealing with each other; then the matter of Berlin and a divided Germany; and finally, as between Russia, the U.K. and ourselves some agreement on a plan for control of nuclear testing.

Therefore, it was a mystery, and remains a mystery, as to why at this particular moment the Soviets chose so to distort and overplay the U–2 incident that they obviously wanted no talks of any kind, and, in fact, made it impossible to begin them. I am not going to speculate today as to the future, but it is quite clear that since they wanted no talks whatsoever at this time that we can be watchful for more irritations, possibly other incidents that can be more than annoying, sometimes creating real problems.

For example, just today a half hour before I landed, it was reported to me that there is a C–47 missing in Western Germany. This is an unarmed, slow plane—no possibility of being used for military purposes—and, in fact, I believe it had nine passengers aboard. There was some bad weather and its route took it near the Eastern German border. We do not know at this moment that any deliberate act delayed it, but at least it is overdue. And so, in the atmosphere in which we now have to think and live we cannot be sure that the worst has not happened.

Now, I may want to talk soon to the nation about these matters, and for that part of it, I now stop. But I do want to tell all of you people about three or four encouraging features that I encountered. First of all, was the assurance of the support of the home folks—from friends, and from the Joint Chiefs of Staff, from the political leaders of both parties, from newspaper comments and editorial comment of every kind—I was assured of the essential solidarity of the United States, and the sincerity of our peaceful purposes.

Secondly, was the conduct of my two principal colleagues of the West. Mr. Macmillan and General de Gaulle were superb. They spoke with one voice with our Delegation in support of those things which we thought right and decent and logical.

Thirdly, was an action on the part of the NATO Council yesterday when Secretary Herter reported to them while I was in Portugal. The NATO Resolution unanimously supported the three Western powers in what we were trying to do.

And finally, the Portuguese reception. In a way I think they wanted to provide the United States and the West—and even me personally—with something of an antidote for some of the disappointments we have felt. Government and citizens alike tried to outdo themselves in the warmth and cordiality of their reception, and on top of that, in their assurances from every side—newspapers, the officials, common people coming in who were serving us in the Palace—everywhere they said—the West in effect is right, and we want you to know it. And they used every possible way to do it. And for that day in Portugal yesterday I am grateful.

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Finally, since most of you will understand that by our time here it was one o'clock when I arose this morning I am sure you expected nothing of eloquence. But I did want sincerely to give you some of my reactions, convictions as of this moment, and to say again to each of you: Thank you very much indeed.

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22. ADDRESS OF PRESIDENT EISENHOWER, MAY 25, 1960

[White House press release]

(As actually delivered)

My Fellow Americans:

Tonight I want to talk with you about the remarkable events last week in Paris, and their meaning to our future.

First, I am deeply grateful to the many thousands of you, and to representatives in Congress, who sent me messages of encouragement and support while I was in Paris, and later upon my return to Washington. Your messages clearly revealed your abiding loyalty to America's great purpose—that of pursuing, from a position of spiritual, moral, and material strength—a lasting peace with justice.

You recall, of course, why I went to Paris ten days ago.

Last summer and fall I had many conversations with world leaders; some of these were with Chairman Khrushchev, here in America. Over those months a small improvement in relations between the Soviet Union and the West seemed discernible. A possibility developed that the Soviet leaders might at last be ready for serious talks about our most persistent problems—those of disarmament, mutual inspection, atomic control, and Germany, including Berlin.

To explore that possibility, our own and the British and French leaders met together, and later we agreed, with the Soviet leaders, to gather in Paris on May 16.

Of course we had no indication or thought that basic Soviet policies had turned about. But when there is even the slightest chance of strengthening peace, there can be no higher obligation than to pursue it.

Nor had our own policies changed. We did hope to make some progress in a Summit meeting, unpromising though previous experiences had been. But as we made preparations for this meeting, we did not drop our guard nor relax our vigilance.

Our safety, and that of the free world, demand, of course, effective systems for gathering information about the military capabilities of other powerful nations, especially those that make a fetish of secrecy. This involves many techniques and methods. In these times of vast military machines and nuclear-tipped missiles, the ferreting out of this information is indispensable to free world security.

This has long been one of my most serious preoccupations. It is part of my grave responsibility, within the overall problem of protecting the American people, to guard ourselves and our allies against surprise attack.

During the period leading up to World War II we learned from bitter experience the imperative necessity of a continuous gathering of intelligence information, the maintenance of military communications and contact, and alertness of command.

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An additional word seems appropriate about this matter of communications and command. While the Secretary of Defense and I were in Paris, we were, of course, away from our normal command posts. He recommended that under the circumstances we test the continuing readiness of our military communications. I personally approved. Such tests are valuable and will be frequently repeated in the future.

Moreover, as President, charged by the Constitution with the conduct of America's foreign relations, and as Commander in Chief, charged with the direction of the operations and activities of our Armed Forces and their supporting services, I take full responsibility for approving all the various programs undertaken by our government to secure and evaluate military intelligence.

It was in the prosecution of one of these intelligence programs that the widely publicized U-2 incident occurred.

Aerial photography has been one of many methods we have used to keep ourselves and the free world abreast of major Soviet military developments. The usefulness of this work has been well established through four years of effort. The Soviets were well aware of it. Chairman Khrushchev has stated that he became aware of these flights several years ago. Only last week, in his Paris press conference, Chairman Khrushchev confirmed that he knew of these flights when he visited the United States last September.

Incidentally, this raises the natural question: Why all the furor concerning one particular flight? He did not, when in American last September charge that these flights were any threat to Soviet safety. He did not then see any reason to refuse to confer with American representatives.

This he did only about the flight that unfortunately failed, on May 1, far inside Russia.

Now, two questions have been raised about this particular flight; first, as to its timing, considering the imminence of the Summit meeting; second, our initial statements when we learned the flight had failed.

As to the timing, the question was really whether to halt the program and thus forego the gathering of important information that was essential and that was likely to be unavailable at a later date. The decision was that the program should not be halted.

The plain truth is this: when a nation needs intelligence activity, there is no time when vigilance can be relaxed. Incidentally, from Pearl Harbor we learned that even negotiation itself can be used to conceal preparations for a surprise attack.

Next, as to our government's initial statement about the flight, this was issued to protect the pilot, his mission, and our intelligence processes, at a time when the true facts were still undetermined.

Our first information about the failure of this mission did not disclose whether the pilot was still alive, was trying to escape, was avoiding interrogation, or whether both plane and pilot had been destroyed. Protection of our intelligence system and the pilot, and concealment of the plane's mission, seemed imperative. It must be remembered that over a long period, these flights had given us information of the greatest importance to the Nation's security. In fact, their success has been nothing short of remarkable.

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For these reasons, what is known in intelligence circles as a "covering statement" was issued. It was issued on assumptions that were later proved incorrect. Consequently, when later the status of the pilot was definitely established, and there was no further possibility of avoiding exposure of the project, the factual details were set forth.

I then made two facts clear to the public: first, our program of aerial reconnaissance had been undertaken with my approval; second, this government is compelled to keep abreast, by one means or another, of military activities of the Soviets, just as their government has for years engaged in espionage activities in our country and throughout the world. Our necessity to proceed with such activities was also asserted by our Secretary of State who, however, had been careful—as was I—not to say that these particular flights would be continued.

In fact, before leaving Washington, I had directed that these U–2 flights be stopped. Clearly their usefulness was impaired. Moreover, continuing this particular activity in these new circumstances could not but complicate the relations of certain of our allies with the Soviets. And, of course, new techniques, other than aircraft, are constantly being developed.

Now I wanted no public announcement of this decision until I could personally disclose it at the Summit meeting in conjunction with certain proposals I had prepared for the conference.

At my first Paris meeting with Mr. Khrushchev, and before his tirade was made public, I informed him of this discontinuance and the character of the constructive proposals I planned to make. These contemplated the establishment of a system of aerial surveillance operated by the United Nations.

The day before the first scheduled meeting, Mr. Khrushchev had advised President de Gaulle and Prime Minister Macmillan that he would make certain demands upon the United States as a precondition for beginning a Summit conference.

Although the United States was the only power against which he expressed his displeasure, he did not communicate this information to me. I was, of course, informed by our allies.

At the four power meeting on Monday morning, he demanded of the United States four things: First, condemnation of U–2 flights as a method of espionage; second, assurance that they would not be continued; third, a public apology on behalf of the United States; and, fourth, punishment of all those who had any responsibility respecting this particular mission.

I replied by advising the Soviet leader that I had, during the previous week, stopped these flights and that they would not be resumed. I offered also to discuss the matter with him in personal meetings, while the regular business of the Summit might proceed. Obviously, I would not respond to his extreme demands. He knew, of course, by holding to those demands the Soviet Union was scuttling the Summit Conference.

In torpedoing the conference, Mr. Khrushchev claimed that he acted as the result of his own high moral indignation over alleged American acts of aggression. As I said earlier, he had known of these flights for a long time. It is apparent that the Soviets had decided even before the Soviet delegation left Moscow that my trip to the Soviet

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Union should be canceled and that nothing constructive from their viewpoint would come out of the Summit Conference.

In evaluating the results, however, I think we must not write the record all in red ink. There are several things to be written in the black. Perhaps the Soviet action has turned the clock back in some measure, but it should be noted that Mr. Khrushchev did not go beyond invective—a time-worn Soviet device to achieve an immediate objective. In this case, the wrecking of the Conference.

On our side, at Paris, we demonstrated once again America's willingness, and that of her allies, always to go to the extra mile in behalf of peace. Once again, Soviet intransigence reminded us all of the unpredictability of despotic rule, and the need for those who work for freedom to stand together in determination and in strength.

The conduct of our allies was magnificent. My colleagues and friends—President de Gaulle and Prime Minister Macmillan—stood sturdily with the American delegation in spite of persistent Soviet attempts to split the Western group. The NATO meeting after the Paris Conference showed unprecedented unity and support for the alliance and for the position taken at the Summit meeting. I salute our allies for us all.

* * * * * * *

And now, most importantly, what about the future?

All of us know that, whether started deliberately or accidentally, global war would leave civilization in a shambles. This is as true of the Soviet system as of all others. In a nuclear war there can be no victors—only losers. Even despots understand this. Mr. Khrushchev stated last week that he well realizes that general nuclear war would bring catastrophe for both sides. Recognition of this mutual destructive capability is the basic reality of our present relations. Most assuredly, however, this does not mean that we shall ever give up trying to build a more sane and hopeful reality—a better foundation for our common relations.

To do this, here are the policies we must follow, and to these I am confident the great majority of our people, regardless of party, give their support:

First. We must keep up our strength, and hold it steady for the long pull—a strength not neglected in complacency nor overbuilt in hysteria. So doing, we can make it clear to everyone that there can be no gain in the use of pressure tactics or aggression against us and our Allies.

Second. We must continue businesslike dealings with the Soviet leaders on outstanding issues, and improve the contacts between our own and Soviet peoples, making clear that the path of reason and commonsense is still open if the Soviets will but use it.

Third. To improve world conditions in which human freedom can flourish, we must continue to move ahead with positive programs at home and abroad, in collaboration with free nations everywhere. In doing so, we shall continue to give our strong support to the United Nations and the great principles for which it stands.

Now as to the first of these purposes—our defenses are sound. They are tailored to the situation confronting us.

Their adequacy has been my primary concern for these past 7 years—indeed throughout my adult life.

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In no respect have the composition and size of our forces been based on or affected by any Soviet blandishment. Nor will they be. We will continue to carry forward the great improvements already planned in these forces. They will be kept ready—and under constant review.

Any changes made necessary by technological advances or world events will be recommended at once.

This strength—by far the most potent on earth—is, I emphasize, for deterrent, defensive and retaliatory purposes only, without threat or aggressive intent toward anyone.

* * * * * * *

Concerning the second part of our policy—relations with the Soviets—we and all the world realize, despite our recent disappointment, that progress toward the goal of mutual understanding, easing the causes of tensions, and reduction of armaments is as necessary as ever.

We shall continue these peaceful efforts, including participation in the existing negotiations with the Soviet Union. In these negotiations we have made some progress. We are prepared to preserve and build on it. The Allied Paris communique and my own statement on returning to the United States should have made this abundantly clear to the Soviet Government.

We conduct these negotiations not on the basis of surface harmony nor are we deterred by any bad deportment we meet. Rather we approach them as a careful search for common interests between the Western allies and the Soviet Union on specific problems.

I have in mind, particularly, the nuclear test and disarmament negotiations. We shall not back away, on account of recent events, from the efforts or commitments that we have undertaken.

Nor shall we relax our search for new means of reducing the risk of war by miscalculation, and of achieving verifiable arms control.

* * * * * * *

A major American goal is a world of open societies.

Here in our country anyone can buy maps and aerial photographs showing our cities, our dams, our plants, our highways—indeed, our whole industrial and economic complex. We know that Soviet attaches regularly collect this information. Last fall Chairman Khrushchev's train passed no more than a few hundred feet from an operational ICBM, in plain view from his window. Our thousands of books and scientific journals, our magazines, newspapers and official publications, our radio and television, all openly describe to all the world every aspect of our society.

This is as it should be. We are proud of our freedom.

Soviet distrust, however, does still remain. To allay these misgivings I offered five years ago to open our skies to Soviet reconnaissance aircraft on a reciprocal basis. The Soviets refused. That offer is still open. At an appropriate time America will submit such a program to the United Nations, together with the recommendation that the United Nations itself conduct this reconnaissance. Should the United Nations accept this proposal, I am prepared to propose that America supply part of the aircraft and equipment required.

This is a photograph of the North Island Naval Station in San Diego, Calif. It was taken from an altitude of more than 70,000 feet.

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You may not perhaps be able to see them on your television screens, but the white lines in the parking strips around the field are clearly discernible from 13 miles up. Those lines are just 6 inches wide.

Obviously most of the details necessary for a military evaluation of the airfield and its aircraft are clearly distinguishable.

I show you this photograph as an example of what could be accomplished through United Nations aerial surveillance.

Indeed, if the United Nations should undertake this policy, this program, and the great nations of the world should accept it, I am convinced that not only can all humanity be assured that they are safe from any surprise attack from any quarter, but indeed the greatest tensions of all, the fear of war, would be removed from the world. I sincerely hope that the United Nations may adopt such a program.

As far as we in America are concerned, our programs for increased contacts between all peoples will continue. Despite the suddenly expressed hostility of the men in the Kremlin, I remain convinced that the basic longings of the Soviet people are much like our own. I believe that Soviet citizens have a sincere friendship for the people of America. I deeply believe that above all else they want a lasting peace and a chance for a more abundant life in place of more and more instruments of war.

* * * * * * *

Finally, turning to the third part of America's policy—the strengthening of freedom—we must do far more than concern ourselves with military defense against, and our relations with, the Communist bloc. Beyond this, we must advance constructive programs throughout the world for the betterment of peoples in the newly developing nations. The zigs and zags of the Kremlin cannot be allowed to disturb our worldwide programs and purposes. In the period ahead, these programs could well be the decisive factor in our persistent search for peace in freedom.

To the peoples in the newly developing nations urgently needed help will surely come. If it does not come from us and our friends, these peoples will be driven to seek it from the enemies of freedom. Moreover, those joined with us in defense partnerships look to us for proof of our steadfastness. We must not relax our common security efforts.

As to this, there is something specific all of us can do, and right now. It is imperative that crippling cuts not be made in the appropriations recommended for Mutual Security, whether economic or military. We must support this program with all of our wisdom and all of our strength. We are proud to call this a nation of the people. With the people knowing the importance of this program, and making their voices heard in its behalf throughout the land, there can be no doubt of its continued success.

* * * * * * *

Fellow Americans, long ago I pledged to you that I would journey anywhere in the world to promote the cause of peace. I remain pledged to pursue a peace of dignity, of friendship, of honor, of justice.

Operating from the firm base of our spiritual and physical strength, and seeking wisdom from the Almighty, we and our allies together

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will continue to work for the survival of mankind in freedom—and for the goal of mutual respect, mutual understanding, and openness among all nations.

Thank you, and good night.

APPENDIX 2

1. QUESTIONS RAISED BY SENATOR LAUSCHE AND ANSWERS PREPARED BY THE DEPARTMENT OF STATE

Question One: To what extent has the Soviet Union been spying in the United States, West Germany, and other nations?

In recent years there has been continued evidence of the extensive nature of Soviet espionage in the United States, West Germany and other nations. The manner in which the Soviet espionage system functions abroad has been clearly set forth in the findings of the Royal Commissions in Canada and Australia which were set up as a result of the Guzenko and Petrov defections. These commissions established that there was not one but at least three parallel Soviet intelligence networks operating in Soviet missions abroad: military, state security and party. To these may also be added naval and commercial intelligence networks. The activities of eleven Soviet officials expelled from the United States since 1953 are described in the attached document, which was presented to the United Nations by Ambassador Henry Cabot Lodge on May 24, 1960.

So far as the espionage activities of non-official Soviet personnel in the United States are concerned, the case of Colonel Rudolph Ivanovich Abel provides a good example of this type of activity. Colonel Abel was convicted by a federal jury in New York on October 25, 1957 for conspiring to steal United States defense secrets for the Soviet Union. Abel, a veteran of the Soviet intelligence service, had entered the United States in 1948 under false documents as a United States citizen, Andrew Kayotis. While here he also used the name Emil Goldfus for which he had false documents and also documents for a mythical Martin Collins. During his years in the United States and before his exposure Abel used a photographer's studio on Fulton Street in Brooklyn as a front from which he operated.

Methods used by Abel and an accomplice, Reino Hayhanen, were ingenious. In order to contact his superiors, Hayhanen would place chalk marks at various predesignated points. To minimize personal contacts and subsequent danger of compromise by surveillances, a system of widely separated "dead drops" and "banks" was established throughout the metropolitan area of New York. Abel was also a specialist in artifacts. In his "photographic studio" at the time of his arrest were found both the tools and the devices he fashioned for passing messages: hollowed-out coins, bolts, jewelry, magnetic containers, and other objects in which could be inserted film containing code or plain text messages and other material for transmittal.

American citizens recruited by Soviet espionage agents include Julius Rosenberg, Ethel Rosenberg, David Greenglass, Abraham

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Brothman, Miriam Moskowitz, Morton Sobell, Harry Gold, Kurt Ponder, Otto Verber, Jack Soble, Myra Soble, Jacob Albam, and others.

So far as Soviet espionage in West Germany is concerned, a spokesman of the Federal German Republic issued a statement on May 13, 1960, briefly describing the scale on which the Soviet Union and other Communist countries practice espionage within the territory of the Federal Republic and West Berlin. The bulletin of the German Federal Government of May 17, 1960, describes this announcement as follows:

"The spokesman announced that between August 30, 1951, and December 31, 1959, more than 18,000 agents of the Soviet Bloc were apprehended in the Federal Republic and West Berlin. Of these, 1,700 were given prison sentences; about 16,500 were acquitted because of duress, genuine repentance, or voluntary and timely confession. All these agents confessed to having had orders to carry out espionage in the Federal Republic or in West Berlin.

"Exact information was given about the authority from which these agents received their orders. Of the agents apprehended in 1959, fully 2,325 admitted having worked for the espionage service of the Soviet-occupied zone of Germany, 264 named the Soviet Union as the country from which they had received their orders and 462 admitted having received orders from other East-Bloc countries. * * * The corresponding figures for 1958 are: Soviet zone, 366; Soviet Union, 204; other Communist countries, 236.

"In the first quarter of 1960 alone, 588 self-confessed agents of the Communist Bloc have been apprehended.

"The extent of Communist espionage activities in the Federal Republic and West Berlin alone, and the increase in these activities of late, is evident from these figures. To this must be added that these agents, according to their own confessions, had in each case fulfilled more than one espionage mission. The 264 agents of the Soviet Union apprehended in 1959 had carried out a total of 790 single missions; the 2,325 Soviet zone agents of the same year had completed a total of 8,234 missions.

"According to painstaking analysis by the German authorities, the Communist countries maintain about 16,000 agents on the soil of the Federal Republic and West Berlin, in spite of an annual loss of 2,400 to 2,800 such agents. These figures include agents who have carried out only preparatory missions and agents who have been hired but not put into service."

Soviet espionage operatives have also been very active in other nations. The recent testimony of Aleksander Y. Kaznacheev before the Senate Internal Security Subcommittee on December 14, 1959, provides extensive evidence concerning Soviet espionage activities in Asia. Similarly, the testimony of Peter S. Deryabin before the House Committee on Un-American Activities released March 17, 1959, provides evidence of Soviet espionage activities in Austria. The testimony of Yuri A. Rastvorov also before the Senate Internal Security Subcommittee on February 8, 1956, April 12, 1956, October 24, 1956 and October 30, 1956, provide

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evidence of Soviet espionage activities in Japan. Other cases could be given; but it is abundantly clear from the instances already cited that Soviet directed espionage activities are worldwide and extremely extensive in scope.

Question Two: How many times it has breached its commitments to other nations in the world—especially the captive nations?

With regard to the number of times the Soviet Government has breached its commitments to other countries, the Department of State is not aware of the existence of any statistical compilation. A mere count of Soviet violations, whereby, for example, a violation leading directly to the subjugation and absorption of an entire country by the U.S.S.R. would be given the same numerical weight as Soviet infringement of a trade agreement appears, in the Department's view, to lack real meaning. Of course, the Department has closely followed over the years the question of Soviet treaty violations, which has additionally been the subject of close congressional scrutiny as in the Senate Judiciary Committee's 1956 Staff Study "Soviet Political Agreements and Results" and in the 1950 report of the House Foreign Affairs Committee "Background Information on the Soviet Union in International Relations."

"Soviet Treaty Violations," Number 233 (August 10, 1959) in the series "Soviet Affairs Notes," describes the principal Soviet violations. Violations occurring before and after the beginning of World War II are listed separately and appear under country-by-country breakdowns within each of these two main categories. A copy of "Soviet Treaty Violations" is enclosed.

Question Three: Is there a difference between spying by foot on land on the one hand, and by plane in the air on the other?

Considered in the light of the end purpose of espionage activities, which may be summarized as the acquisition of information which the state, against which the activities are directed, wishes to conceal from the knowledge of one or more foreign powers, there would appear to be no fundamental distinction between the various means which might be employed in securing such information.

Question Four: Is it in the interest of our country that we abandon the general and traditional methods of acquiring intelligence?

As indicated by the President in his report to the American people on May 25, 1960, the security of the United States and of the free world "demand, of course, effective systems for gathering information about the military capabilities of other powerful nations, especially those that make a fetish of secrecy. This involves many techniques and methods. In these times of vast military machines and nuclear-tipped missiles, the ferreting out of this information is indispensable to free world security. This has long been one of my most serious preoccupations. It is part of my grave responsibility, to guard ourselves and our allies against surprise attack."

In the same speech the President reiterated his "open skies" offer as a means of guarding against surprise attack. The President indicated that the United States would at an appropriate time submit a program to the United Nations with a recommen-

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dation that the United Nations itself conduct aerial reconnaissance. The program outlined by the President offers the best hope for guarding the peoples of the world against surprise attack. Unfortunately, the Soviet Government rejected the President's earlier "open skies" proposal. It remains to be seen whether the Soviets will reject his more recent suggestion.

Question Five: If we do so, what are the probabilities of the Soviet Union following a similar course?

In the Department's opinion, even if the United States were to abandon the general and traditional methods of acquiring intelligence, there is little likelihood that the Soviet Union would follow a similar course.

Question Six: Why did the Communists break their treaty with the Poles in World War II and stab the Poles in the back while the latter were fighting the Nazis?

The Molotov-Ribbentrop agreements of August 23, 1939, providing a ten year non-aggression guarantee, furnished a basis for coordinated German and Soviet aggression in Eastern Europe. Poland was an early victim, falling under Nazi attack only eight days after the agreements were signed. On September 16, 1939 the U.S.S.R. sent a note to the Polish Government stating that the Polish State was insolvent and that the Polish Government had "virtually ceased to operate." The note claimed that this situation might "create a menace to the U.S.S.R." Using this pretext, the U.S.S.R. occupied major parts of Poland on September 17, 1939. Less than two months later, Molotov boasted: "* * * one swift blow to Poland, first by the German and then by the Red Army, and nothing was left of this ugly offspring of the Versailles Treaty * * *."

Question Seven: What are the details concerning the brutal massacre of Polish soldiers by the Communists in the Katyn forests?

A Select Committee of the House of Representatives made an exhaustive study of the Katyn Forest massacre in 1952. The reports of this Committee, The Select Committee To Conduct an Investigation and Study of the Facts, Evidence, and Circumstances of the Katyn Forest Massacre, contain more detail on this subject than is available elsewhere in the Department's files. The facts developed by the Committee were brought to the attention of the United Nations by the U.S. Delegation, and were given wide circulation abroad through the facilities of the United States Information Service.

Question Eight: Why, in World War II, did the Reds, while advancing westward and nearing Poland, induce the Polish people of Warsaw to heroically rebel against the Nazi occupiers and then abandon them to slaughter by the Nazis?

In various wartime agreements, the allied nations pledged themselves to conduct the war against the enemy unrelentingly, and to cooperate after the war in plans for recovery. The U.S.S.R., however, had its own plans for postwar Communist expansion in Eastern Europe, as evidenced by subsequent developments there. This political motive was an important factor influencing Soviet military inaction during the Warsaw uprising.

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Question Nine: Why did the Soviet break its pledged word that the people of the satellite nations, under free and open elections, would be permitted to choose the type of government they wanted?

Soviet refusal to grant self-determination to the peoples of the satellite nations of Eastern Europe stems from the Soviet campaign during and after World War II to gain and maintain Communist control over these nations. The United States does not regard Soviet domination over the nations of Eastern Europe as an acceptable permanent condition of affairs. Regimes in these countries have been forcibly imposed and maintained, as in the case of Hungary, by repeated Soviet political and military intervention. The peoples of these countries are denied basic freedoms and real national independence.

Satisfactory solution of the Eastern European problem must be based, in keeping with the solemn pledges by the United States, Soviet, and other Allied Governments during and after World War II, upon the right of the Eastern European peoples freely (a) to choose the governments and institutions under which they will live and (b) to enjoy full national independence free from all foreign interference in their internal affairs.

Question Ten: Why did the Soviet aid and induce the Red Chinese to use their military power against South Korea, resulting in death and injury to thousands of American boys?

The Soviet Union supported Communist China in the Korean War in order to secure the Soviet satellite government of North Korea for the Communist Bloc and, if possible, to expand Communist power to South Korea and in Asia without instigating a world war which would have resulted from the Soviet Union's co-belligerency with North Korea.

Question Eleven: Why did the Soviet encourage the Red Chinese in the bombardment and killing of innocent people at the Quemoy and Matsu Islands?

The Soviet Union has consistently supported the claims of Communist China to Quemoy and Matsu. During the offshore islands crisis, in mid-1954, however, the Soviet leaders spoke of "popular" but not Soviet "government" support of the Chinese Communists "liberation aspirations" toward the offshore islands. At that time they did not threaten to evoke the 1950 Sino-Soviet "Treaty of Friendship, Alliance and Mutual Assistance". In the 1958 offshore island crisis Khrushchev did issue the warning that "an attack on the People's Republic of China, which is a great friend, ally, and neighbor of our country, is an attack on the Soviet Union" and that if Communist China fell victim to an atomic attack the aggressor would get a rebuff by the same means. The Chinese Communists, who have consistently followed aggressive policies, probably needed no encouragement to initiate the bombardment of Quemoy, but it is likely that, prior to the 1958 attack, the Red Chinese received some expression of support from the Soviet Union.

Question Twelve: What is the explanation for the mass and merciless murder of the freedom fighters of Hungary, Poland, and East Germany, who were fighting for liberation in those respective countries?

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The Communist regime in Hungary was forcibly imposed by the Soviet Union upon the Hungarian people at the end of World War II. Since that time, the Hungarian regime has been and remains, in all essential matters, Soviet-dominated. Because of its origin and nature, it is dependent in the final analysis upon Soviet power for its continued ability to exist and to rule. The Hungarian uprising was so general and sweeping that it unseated this Soviet-dominated regime, attracted large numbers of the Hungarian armed forces to either active or passive support of the revolutionary movement, and placed temporary control of the country in the hands of the Freedom Fighters and of a new coalition government headed by Imre Nagy, which supported the aims of the revolution. Confronted by these internal developments which clearly pointed to the realization by the Hungarian people of their aspiration to live in freedom and independence, and fearing the disintegrative effect which a successful Hungarian revolt would have on the Soviet Bloc structure, the Soviet Union intervened ruthlessly with massive armed force to crush the revolt and reimpose a Soviet-dominated regime upon the Hungarian people. Following the Soviet intervention, the new Hungarian regime, supported by the continued presence of Soviet troops within Hungary, undertook a campaign of systematic and harsh reprisals against the leaders and participants in the revolt aimed at the suppression of all remaining overt dissent and opposition, the re-establishment and consolidation of its power and authority, and the discouragement of any future attempts at rebellion.

In East Germany in 1953 and in Poland in 1956 unrest occurred as a result of popular dissastisfaction with the situation in those countries. In contrast to the 1956 events in Hungary, however, these disturbances were short-lived and resulted in relatively little bloodshed.

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LETTER DATED 24 MAY 1960 FROM THE PERMANENT REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SECRETARY-GENERAL[1]

Enclosed herewith is a memorandum giving detailed information on the illustrative list of Soviet espionage agents apprehended in the United States since the death of Marshal Stalin to which I referred in my statement in the Security Council on 23 May.

I request that this memorandum be circulated as a Security Council document.

(Signed) H.C. Lodge

[1]United Nations Security Council Documents 4325, May 24, 1960.

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ADDITIONAL INFORMATION ON THE ACTIVITIES OF THE INDIVIDUALS NAMED BY AMBASSADOR LODGE IN HIS STATEMENT IN THE SECURITY COUNCIL ON 23 MAY 1960 FOLLOWS:

1. Commander Igor Aleksandrovich Amosov

Amosov entered the United States 17 February 1952 as Assistant Soviet Naval Attache. Amosov was the Soviet principal in an intelligence operation directed by the Soviets from their Naval attache's office. He served in this capacity from 7 June 1952 until his departure in February 1954. Targets assigned by Amosov to the recruited agent included radar developments, details of the latest cargo ships, manuals reflecting details of the latest electronic developments and bombsight data. He paid this agent a total of $2,000 for his services. Amosov was declared persona non grata for these activities on 3 February 1954 and left the United States on 7 February 1954.

2. Colonel Ivan Aleksandrovich Bubchikov

Bubchikov entered the United States 1 December 1954 as an Assistant Soviet Military Attache. From July 1955 through May 1956, Bubchikov maintained contact with a naturalized American citizen of Russian origin who was employed as a sales engineer. In July 1955 he appeared at the sales engineer's residence late in the evening and sought his co-operation in securing data concerning jet fuel, atomic submarines, and aeronautical developments. Bubchikov offered the engineer large sums of money. In view of these activities the Department of State on 14 June 1956 declared Bubchikov persona non grata for engaging "in espionage activities incompatible with his continued presence in this country". He departed the United States 24 June 1956.

3. Major Yuri Pavlovich Krylov

Krylov entered the United States 4 May 1955 as Assistant Soviet Military Attache, Washington, D.C. In August of 1955, Krylov contacted an employee of the Atomic Energy Commission and attempted to obtain from him information concerning the technical aspects of nuclear power. In 1957, Krylov was declared persona non grata for having improperly purchased quantities of electronic equipment through American intermediaries and having attempted to purchase classified military information. He departed the United States 26 January 1957.

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4. Nikolay Ivanovich Kurochkin

Kurochkin entered the United States 4 April 1956 as a Third Secretary of the Soviet Embassy, Washington, D.C. In the fall of 1956 a professional writer contacted the Soviet Embassy seeking statistics as to hosiery production in the Soviet Union. He met Kurochkin, who supplied the desired statistical data and, after a series of meetings, informed the writer that if he would obtain military information - including training and field manuals of the United States Army - to be incorporated in articles Kurochkin was writing for Russian military journals, he would share with him his proceeds from the articles. The writer obtained unclassified training and field manuals of the United States Army which he turned over to Kurochkin, but did not deliver the classified manuals which Kurochkin had requested. He was paid approximately $450. On 6 June 1958, Kurochkin was declared persona non grata for engaging in activities incompatible with his diplomatic status. He departed from the United States on 11 June 1958.

5. Vasiliy Mikhailovich Molev

From August 1944 through January 1957, Molev served several tours of duty in the United States, occupying positions of chauffeur and property custodian to the Soviet Consulate General in New York and property custodian at the Soviet Embassy, Washington, D.C. Boris Morros, an admitted Soviet agent co-operating with the FBI, was instructed by his Soviet superiors to appear in the vicinity of 58 West 58th Street, New York City, at 3 p.m. on the first Tuesday of each month for contact by his Soviet principal. If the contact was not made, Morros was instructed by the Soviets to return the following Wednesday and Thursday. On Wednesday, 7 January 1953, Special Agents of the Federal Bureau of Investigation observed Molev in the vicinity of 58 West 58th Street, New York City. Morros was later instructed by his Soviet principal to meet his Soviet contact on Tuesday, 3 March 1953, on the corner of Central Park South and Avenue of the Americas, New York City. On 3 March 1953, Molev was observed by Special Agents of the Federal Bureau of Investigation meeting with Morros at Central Park South and Avenue of the Americas. On this occasion Morros passed to Molev a report previously obtained from Jack Soble, Morros' immediate superior, who was subsequently convicted of espionage. On 25 January 1957, Jack Soble, Myra Soble, and Jacob Albam were

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arrested on charges of espionage and conspiracy. Simultaneously, Molev was declared persona non grata because of his implication in the conspiracy. He departed the United States 28 January 1957.

6. Aleksandr Petrovich Kovalev

Kovalev arrived in the United States 8 October 1950 as a Second Secretary of the Soviet Delegation to the United Nations. In the course of his stay in the United States Kovalev arranged to receive undeveloped microfilms of materials of intelligence significance at a drop area in New York City. The recruited agent was told to park his car in a designated area in New York City at a designated time and to place a package wrapped in red paper therein so that it could be seen through the rear window in the event material was to be passed. An additional signal by way of marking a telephone directory in a New York restaurant was perfected to indicate to the agent that the material delivered to the dead drop was picked up. Material of intelligence significance was left by the recruited agent in the New York dead drop area and it was retrieved by Kovalev. The agent was given $500 to purchase an electronic device for delivery to the Soviets an additional $500 in payment for delivery of a microfilm reproduction of portions of a manual dealing with an automatic steering device for ships. Kovalev was declared persona non grata by the Department of State for his actions in this case on 3 February 1954 and he departed the United States 10 February 1954.

7. Colonel Maksim Grigorievich Martynov

Martynov entered the United States on 3 November 1954 as a member of the Soviet representation to the United Nations Military Staff Committee. In August 1954, a Soviet national met a United States Army officer in Germany. The Soviet national, aware of the officer's plan to retire from the Army, asked him to be of assistance in obtaining Military Manuals from the Army Command and General Staff School at Leavenworth, Kansas when the Soviet national came to the United States. Meetings in New York City were arranged and a code phrase was established for recognition purposes.

On 15 November 1954, a Special Agent of the Federal Bureau of Investigation, made up to resemble the Army officer, was contacted at the agreed time and place

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in New York City by Martynov. Prearranged signals were exchanged and they talked for approximately thirty minutes. Martynov indicated he was a friend of the Soviet National who contacted the officer in Germany and he asked for the proposed assistance, paying him $250. A subsequent meeting was scheduled for 15 January 1955. On that date, Martynov kept the appointment and the FBI agents accosted him. Martynov identified himself and claimed diplomatic immunity. On 21 February 1955, the Department of State expelled Martynov for the above activity and he departed the United States 26 February 1955.

8. Viktor Ivanovich Petrov

Petrov arrived in the United States 17 February 1953 as a translator employed at the United Nations Secretariat, New York City. Petrov responded to an advertisement placed in a New York newspaper by an aviation draftsman for part-time work. The draftsman was an employee of one of our largest aircraft factories. At the outset, Petrov gave the draftsman insignificant drafting work, later asking him to send for various brochures on aviation. Petrov requested the draftsman to obtain information concerning United States Military Aircraft. The information sought was classified, it concerned the status of United States aircraft development. On 20 August 1956, information concerning Petrov's activities was brought to the attention of the Secretary-General of the United Nations as a result of which Petrov's employment at the United Nations was terminated. Petrov departed the United States on 23 August 1956.

9. Captain Boris Fedorovich Gladkov

Gladkov entered the United States 15 December 1953 as Naval Advisor to the Soviet Representation in the Military Staff Committee of the United Nations. Gladkov met a sales engineer for a New York City Marine Engineering firm at a cocktail party. He cultivated the sales engineer and held a number of clandestine meetings with him. Through the engineer, Gladkov attempted to obtain information relating to United States developments and progress in the field of marine engine design and operation and informed the American citizen that he, Gladkov, had access to fund of money for the purchase of sensitive and classified information on new developments in the field of design and operation of power plants on

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various types of naval crafts. Gladkov also sought to obtain, and offered to pay a large sum of money for, publications dealing with fleet training. During his meetings with the sales engineer which continued on a regular basis Gladkov furnished the engineer $1,550. On 22 June 1956, the Department of State expelled Gladkov for engaging in activities which were incompatible with his status as a member of the Soviet Delegation to the United Nations. He departed 12 July 1956.

10. Lieutenant Colonel Leonid Yegorovich Pivnev

Pivnev entered the United States on 17 March 1950 as Assistant Soviet Air Attache. Pivnev endeavoured to utilize a Washington businessman's address as a mail drop. He explained to the businessman that he would have mail delivered to him at the businessman's address, which mail was to be addressed to a fictitious person and which, upon receipt, was to be delivered by the businessman to him.

On 24 March 1954, he inquired at a Virginia aerial photographic concern as to the possibility of purchasing aerial maps of Chicago, Illinois. He instructed the firm to seek such maps and agreed to pay approximately $8,000 for them. On that date he purchased thirty-three aerial photographs of Washington, D.C. and vicinity. Pivnev, in contacting this firm, identified himself as one "George". On 3 May 1954, he contacted a Washington, D.C. photographer, introducing himself as a Mr. George Tinney, a representative of a private firm desirous of purchasing aerial photographs of the New York City area at a scale of 1:20,000 to 1:40,000 feet. Photographs of this type were not commercially available. On 13 May 1954, he agreed to pay the photographer $700 to obtain the photographs. He advanced on that date the sum of $400 as partial payment. On 20 May 1954, when meeting with the photographer for the purpose of obtaining the photographs, he was accosted by special agents of the Federal Bureau of Investigation on which occasion he identified himself. On 29 May 1954, the Department of State declared Pivnev persona non grata and he departed 6 June 1954.

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11. Vadim Aleksandrovich Kirilyuk

Kirilyuk arrived in the United States 11 September 1958 as a political affairs officer employed by the Department of Trusteeship and Information for Non-Self-Governing Territories, United Nations Secretariat. In April 1959, an American citizen contacted a Soviet official in Mexico City concerning the possibility of obtaining a Soviet university scholarship. The Soviet official obtained complete background information from the American, including the facts concerning his previous assignment in cryptographic machines and systems while serving in the United States Army. Following his return to the United States, the American was contacted by Kirilyuk, who identified himself as one "George". During the period from June through September 1959, Kirilyuk met with the American in a clandestine manner on five occasions. On these occasions he requested data concerning cryptographic machines and instructed the American to seek employment with a vital United States Government agency. Information concerning Kirilyuk's activities was brought to the attention of the Secretary-General of the United Nations whereupon Kirilyuk's employment at the United Nations was terminated. Kirilyuk and his family left the United States on 10 January 1960.

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SOVIET TREATY VIOLATIONS*

I. INTRODUCTION

> The Soviet Union...from the very first days of its existence has accurately and loyally observed the international obligations which it has assumed. The scrupulous observance by the Soviet Union of the treaties and agreements which its representatives have signed is recognized even by those who are unfavorably disposed toward it.
>
> --S. Krylov, Professor of International Law, Moscow State University, (Izvestiya, May 26, 1957.)

Few nations can match the USSR in vociferous protestations of loyalty to international obligations. However, such declarations -- which are typical of Soviet propagandists and scholars alike - diverge widely from actual Soviet practice. In the years since the Bolshevik Revolution the Soviet Government, while consistently accusing others of bad faith in international dealings, has not hesitated to violate its own treaty obligations when such action appeared to be in its interest.

Like most totalitarian states, the Soviet Union recognizes the respect in which legal principles are held by the vast majority of countries of the world. Soviet textbooks in international law profess the standard principle of pacta sunt servanda (treaties must be observed), though stressing at the same time that capitalist states violate treaties as a normal rule. The latter claim in turn paves the way for any necessary justification of treaty violations by the Soviet Union, since the Soviet Government habitually accuses the other party of violation as an excuse for its own nonobservance of a given convention. A 1951 text in international law, for example, describes the "nullification" by the Soviet Government of its 1932 nonaggression pact with Finland as "unquestionably correct and fully justified," since this act was "the result of systematic and provocatory breaches of the obligations of the stated pact by the Finnish side."[1] The facts of the case were quite the reverse.

While Soviet writers tend to be circumspect in discussing treaty obligations, their approach to international law in general may be somewhat more revealing of the Soviet attitude. International law, as seen by Soviet theorists, is essentially an instrument of policy, and its institutions and practices are employed to the extent that they are useful. The matter is put succinctly in one Soviet textbook by Professor Kozhevnikov:

> Those institutions of international law which can facilitate the accomplishment of the stated tasks are recognized and applied in the USSR; those which contradict these aims in any way are rejected by it [the USSR].[2]

* Soviet Affairs Notes, No. 233, August 10, 1959.

1. F.I. Kozhevnikov, Academy of Sciences of the USSR, Institute of Law, Mezhdunarodnoe Pravo [International Law], Moscow, 1951, p. 421.

2. F. I. Kozhevnikov, Sovetskoe Gosudarstvo i Mezhdunarodnoe Pravo [The Soviet State and International Law], Moscow, 1948, p. 25.

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Although the Soviet Union does not specifically extend this principle to the observance of treaties, in practice the mental transition is not a difficult one. The peace treaty of Brest Litovsk, the first treaty concluded by the Soviet regime, was signed in order to gain whatever protection it might afford, but without any intention on the Soviet side of abiding by the treaty's provisions. "Yes, of course we are violating the treaty," declared Lenin in March 1918, "we have already violated it 30 or 40 times." 1

Later Soviet leaders have hesitated to speak so bluntly, but the history of the last 40 years provides numerous examples of deliberate treaty violations by the Soviet regime. A cursory examination of the public conventions entered into by the Soviet Union during this period reveals well over 50 violations. The USSR has disregarded treaty provisions inconvenient to itself, has unilaterally denounced conventions to which it was a party, has threatened abrogation as a means of intimidation, and has on several occasions attacked fellow signatories to treaties of friendship and non-aggression. The cases in this study are some of the more outstanding instances of these practices.

II. PREWAR AGREEMENTS

> Treaties of the Soviet Union are based on principles of equality, sovereignty and mutual benefits of states, while treaties of bourgeois countries are based on the principle of the strong over the weak.
> --V.I. Lisovskii, Mezhdunarodnoe Pravo /International Law/, Kiev University Press, 1955, p. 228.

Violation of the Kellogg-Briand Pact, 1929

The Soviet Union adhered to the Kellogg-Briand Pact in September 1928 upon invitation of the original signatory powers, thereby renouncing war as an instrument of national policy. Adherence to the pact, however, failed to deter the USSR from employing force against its eastern neighbor, China, in the following year.

Notwithstanding its self-proclaimed policy of "anti-imperialism," the Soviet Union had retained ownership and control of the Chinese Eastern Railroad, inherited from the Tsarist regime. Chinese resentment at this survival of Russian domination in Manchuria, coupled with irritation at subversive activities directed from Soviet diplomatic establishments in China, resulted, in 1929, in confiscation of the railroad by the Chinese and the arrest of a number of Soviet employees. The Soviet Government rebuffed attempts to settle the dispute by diplomatic means, preferring to employ its clearly superior military power to force a return to the status quo ante. In October and November 1929 Soviet troops, supported by aircraft and gunboats, invaded Manchuria and secured the capitulation of the Chinese after the latter had lost some 6,000 men in a brief and futile resistance. Efforts by the United States and other Western powers to invoke the Kellogg-Briand Pact and to encourage a settlement by peaceful means were brusquely rejected by the Soviet Government.

The Litvinov Agreements

In 1933 the United States recognized the Government of the USSR following negotiations and an exchange of letters between Soviet Foreign Minister Litvinov and President Roosevelt in regard to various outstanding differences between the two countries. In his letter of November 16, 1933, Litvinov stated:

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1. "War and Peace (1918), Selected Works, New York, 1943, vol. VII, p. 301.

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> ...it will be the fixed policy of the Government of the Union of Soviet Socialist Republics...not to permit the formation or residence on its territory of any organization or group -- and to prevent the activity on its territory of any group or organization -- which has as an aim the overthrow or the preparation for the overthrow of, or the bringing about by force of a change in, the political or social order of the whole or any part of the United States, its territories or possessions.

The Foreign Minister's avowal produced no effect whatever upon the activities of the Third International, or Comintern, which continued to carry out its role as the organizer and directing center of the world communist movement from its Moscow headquarters. The purpose of the Comintern, clearly defined in its statutes and theses, was "the struggle by all available means, including armed forces, for the overthrow of the international bourgeoisie and the creation of an international Soviet Republic."

Although the Comintern was formally dissolved in 1943, Soviet-inspired communist activity in the United States continued unabated. Evidence of systematic violation of the Litvinov agreements after 1945 was brought to light by convictions under the US Alien Registration Act of 1940, which made it a criminal offense "to organize or help to organize any society, group or assembly of persons who teach, advocate or encourage the overthrow or destruction of any Government in the United States by force or violence." The trial and conviction in 1949 in a US Federal Court in New York of 11 communist leaders revealed that the American Communist Party, acting upon orders of the Soviet Union issued by Dmitri Manuilsky, Comintern leader and in 1949 Foreign Minister of the Ukrainian SSR, had returned to a policy of violent revolution.

The Litvinov agreements also contained the following provision, as stated by Litvinov in another letter to President Roosevelt on November 16, 1933:

> ...the Government of the Union of Soviet Socialist Republics, while reserving to itself the right of refusing visas to Americans desiring to enter the Union of Soviet Socialist Republics on personal grounds, does not intend to base such refusals on the fact of such persons having ecclesiastical status.

In March 1955 the Soviet Government expelled the Reverend Georges Bissonette, the most recent in a succession of clergymen of the Assumptionist Order who had resided in Moscow and ministered to the spiritual needs of American nationals of the Roman Catholic faith in Moscow. The Soviet Government refused entry to the Reverend Louis Dion as successor to Father Bissonette on the grounds that the Litvinov-Roosevelt agreement provided for reciprocity in the admission of clergymen to the respective countries. Although the 1933 agreement contained no provision to this effect -- of which the Soviet Union's failure to make any such claims in the intervening years was itself tacit admission -- the Soviet Government continued to bar Father Dion for nearly four years. He was finally admitted in January 1959, after repeated representations by the United States to the Soviet Government.

Invasion of Poland, 1939

On July 25, 1932, the Soviet Union and Poland signed a treaty of non-aggression. The treaty was extended by the protocol of May 5, 1934, and was reaffirmed by the statements of November 26, 1938. Article 1 of the 1932 non-aggression pact stated:

> The two Contracting Parties, recording the fact that they have renounced war as an instrument of national policy in their mutual relations, reciprocally undertake to refrain from any aggressive action against or invading the territory of the other Party, separately or together with other powers.

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In September 1939, less than 12 months after having reaffirmed this treaty, the Soviet Union invaded Poland. The territory of the Polish state was divided with Nazi Germany. The Soviet Government coolly explained its act of aggression in these words: "The Polish State and its government have virtually ceased to exist. Treaties concluded between the USSR and Poland have thereby lost their validity."

Foreign Minister Molotov, speaking to an extraordinary session of the USSR Supreme Soviet on October 31, 1939, gloated over the easy conquest of Poland. "The ruling circles of Poland," he said, "were very proud of the 'durability' of their government and the 'might' of their army. Nevertheless, it turned out that a quick blow against Poland, first by the German Army and then by the Red Army, sufficed to leave nothing remaining of the ugly offspring of the Versailles Treaty."

The Attack on Finland

By the Treaty of Peace between the Soviet Union and Finland, concluded in October 1920, the Soviet Government recognized the independence and sovereignty of Finland, and both parties agreed "to maintain for the future an attitude of peace and goodwill towards one another." On January 21, 1932, the Soviet Union and Finland signed a treaty of nonaggression, which, on April 7, 1934, was renewed for 10 years. Finland, seemingly, could also take comfort from the fact that the Soviet Union, by adherence to the Kellogg-Briand Pact, had renounced war as an instrument of national policy and had joined the League of Nations in September 1934. Article 12 of the League Covenant required that disputes be submitted to the League for arbitration and enquiry, and that neither party should resort to war until three months after the award of the arbiters or the report of the Council.

In October 1939 the Soviet Government, summoning a Finnish representative to Moscow, presented to Finland a series of demands, including cession of territory and disarming of zones along the Finnish-Soviet border. The Finns were disinclined to accede to the Soviet "proposals," and negotiations reached a deadlock. On November 28, 1939, the Soviet Union announced the abrogation of its nonaggression pact with Finland after a "frontier incident" and rejected a Finnish proposal for a commission of enquiry. On November 29, the Soviet Union attacked Finland without a declaration of war. Thirty Red Army divisions crossed the frontier, towing in their wake a "Finnish People's Government," headed by former Comintern secretary Otto Kuusinen. The puppet regime, which established itself at Terijoki near the Soviet border, was recognized by the USSR on December 1 as the legitimate government of Finland. On December 4 Molotov, responding to a communication from the League of Nations, stated:

> The Soviet Union is not at war with Finland and does not threaten the Finnish people. The Soviet Union maintains peaceful relations with the Democratic Republic of Finland.

Under the terms exacted from Finland by the Treaty of Peace of March 12, 1940, the Soviet Union annexed the Karelian Isthmus and other Finnish territory. By the later peace treaty of February 10, 1947, the Soviet Union secured additional Finnish territory as a prize for its re-invasion of Finland in 1941.

The Fate of the Baltic States

Like Finland, the three Baltic republics had been officially assured of Soviet friendship and peaceful intentions. As stated in the nearly identical language of the 1920 peace treaties:

> ...Russia unreservedly recognizes the independence and autonomy of the State of Estonia /Latvia, Lithuania/, and renounces voluntarily and forever all rights of sovereignty formerly held by Russia...

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These professions of good faith were reinforced by treaties of nonaggression and peaceful settlement signed by the Soviet Union with each of the three countries. The text of the treaty with Estonia stated:

> Article 1. Both High Contracting Parties mutually guarantee the inviolability of the frontiers existing between them...and undertake to refrain from any act of aggression or any violent measures directed against the integrity and inviolability of the territory or against the political independence of the Other Contracting Party, whether such act of aggression or such violent measures are undertaken separately or together with other powers, with or without a declaration of war...[1]

This treaty, virtually identical to those signed with Latvia and Lithuania, was by 1939 a doubtful indicator of true Soviet intentions toward these countries. A secret protocol to the Nazi-Soviet Pact, signed August 23, 1939, placed Estonia and Latvia within the Soviet sphere of interest. A second treaty, with secret protocols, on September 28 transferred Lithuania to the Soviet sphere in exchange for additional Polish territory for Germany.

On September 29, 1939, the Soviet Union compelled Estonia to sign a pact of mutual assistance. Lativa and Lithuania signed similar treaties on October 5 and 10, respectively. The USSR received leases on military bases and port installations and the right to maintain armed forces on the territories of the states concerned.

Its immediate object achieved, the Soviet Union once again gave guarantees to its small neighbors. Clause V of the Estonian and Latvian treaties stated:

> The entry into force of this pact shall in no way infringe upon the sovereign rights of the Contracting Parties, particularly their economic system and social structure.

Clause VII of the Lithuanian treaty stated in more specific terms:

> Entry into force of this pact shall not affect to any extent the sovereign rights of the Contracting Parties, in particular their state organization, economic and social systems, military measures and, in general, the principle of noninterference in internal affairs.

Further assurances were provided by Foreign Minister Molotov in a speech to the USSR Supreme Soviet on October 31, 1939:

> We stand for the scrupulous and punctilious observance of the pacts on the basis of complete reciprocity and we declare that all the nonsensical talk about the Sovietization of the Baltic countries is only to the interest of our common enemies.[2]

On June 15 and 16, 1940, Estonia, Latvia and Lithuania were occupied by Soviet troops. On July 21 the three states, following the forced resignation of their governments, were incorporated into the USSR.

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1. Treaty with Estonia, May 4, 1932, extended by the protocol of April 4, 1934; with Latvia, February 5, 1932, extended by the protocol of April 4, 1934; with Lithuania on September 28, 1926, extended by the protocol of April 4, 1934.

2. Pravda, November 1, 1939.

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III. WARTIME AND POSTWAR AGREEMENTS

> Unilateral, arbitrary abrogation of treaties contradicts international law. However, despite this, arbitrary annulment of treaties is a common occurrence in the practice of capitalist states.
> --F.I. Kozhevnikov in Academy of Sciences of USSR, Institute of Law, Mezhdunarodnoe Pravo /International Law/ Moscow, 1951, p. 421.

Soviet Treaty Violations in Iran

Soviet obligations toward Iran were governed by wartime agreements as well as by the Soviet-Iranian Treaty of Friendship, still in force, concluded on February 26, 1921. Included in the Treaty of Friendship was a mutual undertaking by each party "to abstain from any intervention in the internal affairs of the other." The stationing of British and Soviet forces in Iran during the Second World War was regulated by the Tripartite Treaty of Alliance concluded by the two powers with Iran on January 29, 1942. Article V of this treaty stated:

> The forces of the Allied Powers shall be withdrawn from Iranian territory not later than six months after all hostilities between the Allied Powers and Germany and her associates have been suspended by the conclusion of an armistice or armistices or on the conclusion of a peace treaty between them, whichever date is the earlier...

In Article IV of the same treaty, Britain and the Soviet Union agreed "to disturb as little as possible the administration and the security forces of Iran, the economic life of the country, and the application of Iranian laws and regulations."

On December 1, 1943, during the Tehran Conference, the Big Three issued a communique stating: "The Governments of the United States, the USSR, and the United Kingdom are at one with the Government of Iran in their desire for the maintenance of the independence, sovereignty, and territorial integrity of Iran." Later, in a letter of September 20, 1945, Foreign Minister Molotov reaffirmed Soviet obligations under the Tripartite Treaty:

> As regards the complete withdrawal of Soviet troops from Iran, the Soviet Government, as you are aware, takes the view that this withdrawal of troops should be effected within the period laid down in the Anglo-Soviet-Iranian Treaty.

Notwithstanding these various commitments, the Soviet Union began to promote rebellion in the northern area of Iran occupied by Soviet troops. Disturbances broke out in the fall of 1945 in the Soviet-controlled Iranian province of Azerbaijan. Rebels, equipped with Soviet arms and led by the Iranian Communist Pishevari, were aided by Soviet agents who crossed into Iran. On December 12, 1945, the rebels proclaimed the Autonomous Republic of Azerbaijan. Red Army troops provided full protection and prevented Iranian troops from reaching the scene. Shortly afterwards rebels in the neighboring Kurdish province, carrying Soviet arms and wearing Soviet uniforms, proclaimed an independent Kurdish republic. In Azerbaijan, Pishevari broadcast his thanks to the Red Army for its assistance. Although the Iranian Government appealed to the United Nations, the rebels remained in control and Soviet troops failed to leave by the agreed date of March 2, 1946.

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In April 1945 Iranian Premier Qavam, who had gone to Moscow to attempt a settlement, agreed under duress to the withdrawal of the Iranian complaint before the United Nations, to the admission of three Communists to his cabinet, and to the establishment of a joint Soviet-Iranian oil company (Russia holding 51 percent of the stock) for exploitation of oil in northern Iran. On May 9, 1946, Red Army forces were withdrawn from Iran, more than two months after the deadline. Subsequently the Iranian Premier, under strong pressure at home, dismissed the Communists from the cabinet. In November 1946 the Iranian Government sent troops into the northern provinces, and the rebel regimes in Azerbaijan collapsed on December 15, 1946. On October 22, 1947, the Iranian Majlis refused to ratify the Soviet-Iranian oil agreement.[1]

Abrogation of Treaties with Great Britain and France

On May 26, 1942, the Soviet Union and the United Kingdom signed a Treaty of Alliance and Postwar Collaboration at London, in which the signatories pledged joint efforts during the wartime period and concluded an alliance against Germany extending into the postwar period. Part II of the Treaty, a military alliance directed explicitly against Germany, boundeach party to give the other immediate support in the event of a German attack. The alliance was to endure for 20 years and to continue thereafter in the event that neither party gave 12 months' notice of a desire to terminate the contract. The Soviet Union concluded an essentially similar treaty of alliance and mutual aid with France on December 10, 1944.

The Soviet Union unilaterally abrogated both these treaties in early 1955. The action was one aspect of a Soviet campaign to prevent the ratification of the Paris agreements, which terminated the occupation of Western Germany and brought the newly formed Federal Republic into NATO. Soviet notes to France and Britain in December 1954 contained warnings that their respective alliances would be annulled if the Paris agreements were ratified. On May 7, 1955, having failed to prevent ratification, the Soviet Union officially annulled its wartime alliances.

The Countries of Eastern Europe

In February 1945 the heads of government of the United States, the United Kingdom, and the Soviet Union, meeting at Yalta, issued a Declaration on Liberated Europe in which they agreed to assist the liberated peoples to set up "democratic institutions of their own choice," in furtherance of the principles of the Atlantic Charter. Specifically, the three governments agreed to assist the liberated people

> ...to form interim governmental authorities broadly representative of all democratic elements in the population and pledged to the earliest possible establishment through free elections of governments responsive to the will of the people...

These provisions were rendered meaningless by Soviet policies in those territories liberated by the Red Army. Ignoring the Yalta commitments, the Soviet Union, in a now familiar pattern, installed communist-dominated regimes in Hungary, Bulgaria, and Rumania. In Rumania, acting through its own authorities and through the Rumanian communist Party, the USSR deliberately prevented the exercise of democratic rights by the people. In February 1945 Deputy Foreign Minister Vyshinsky arrived in Bucharest to dictate the dismissal of the Radescu Government and the imposition of the communist-dominated Groza regime. Direct interference by Soviet authorities -- including the use of troops -- in the elections of November 1946 was only one of the many further instances of Soviet violation of the declaration.

1. George Lenczowski, The Middle East in World Affairs, Ithaca, New York, 1952, pp. 173-175.

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Similar Soviet actions occurred in Hungary and Bulgaria. In Hungary, for example, General Sviridov, Deputy Chairman of the Allied Control Commission, unilaterally dissolved Catholic youth organizations in June 1946 and in the following year forced the resignation of Prime Minister Ferenc Nagy. Contrary to commitments made at Potsdam on August 2, 1945 that directives of the Allied Control Commissions would be issued by the Soviet Chairmen "after agreement on these directives with the English and American representatives,"[1] Soviet representatives on the Commissions in Rumania, Hungary, and Bulgaria consistently issued unilateral instructions in the name of the Commission and thwarted the activities of the British and American representatives even to the point of restricting their freedom of movement.

In regard to Poland, the Big Three at Yalta agreed as follows:

> The Provisional Government which is now functioning in Poland should therefore be reorganized on a broader democratic basis with the inclusion of democratic leaders from Poland itself and from Poles abroad....
>
> This Polish Provisional Government of National Unity shall be pledged to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot. In these elections all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates.

That the Soviet Union had little intention of observing this agreement became evident almost immediately, when, on April 21, 1945, it concluded a formal treaty of alliance with the so-called "Lublin Government,"[2] which had been organized in the Soviet Union and moved into Poland behind Soviet troops.

Nevertheless, at Potsdam the Soviet Union once again voiced its adherence to the principles of democracy. The Potsdam Protocol stated:

> The three powers note that the Polish Provisional Government, in accordance with the decisions of the Crimea Conference, has agreed to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot in which all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates.

The Polish Provisional Government was nominally a coalition, but in fact its key positions were occupied by Communists, who had established themselves in the period of "liberation" by the Red Army. Elections were postponed until January 1947 in order to terrorize and eliminate the opposition.[3] Representations by the United States and United Kingdom to the Polish Provisional Government calling attention to the obligations of Yalta and Potsdam were rejected. The Soviet Union refused to join the two Western powers in their approach on this matter to the Polish Government.

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1. Potsdam Protocol, XI. Revised Allied Control Commission Procedure in Rumania, Bulgaria, and Hungary, and Annex I regarding the Allied Control Commission in Hungary.

2. Hugh Seton-Watson, The East European Revolution, p. 157.

3. Seton-Watson, op. cit., pp. 171-179; Oscar Halecki in Stephen D. Kertasz (ed.), The Fate of East Central Europe, pp. 134-139.

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Germany

In Germany the USSR has distorted and violated numerous provisions of wartime and postwar agreements with the Western powers. The subject is too complex for detailed discussion here, but two major sets of agreements may be noted: the agreements reached at Potsdam and embodied in the Potsdam Protocol, and the agreements on the occupation and control of Germany

1. The Potsdam Protocol of August 1, 1945

Democracy. The Protocol contained a statement of common Allied objectives looking toward the development of democracy in postwar Germany. Among the political principles agreed upon were the following:

> ....The judicial system will be reorganized in accordance with the principles of democracy, of justice under law, and of equal rights for all citizens...
>
> ...local self-government shall be restored throughout Germany on democratic principles...
>
> ...all democratic political parties with rights of assembly and of public discussion shall be allowed and encouraged throughout Germany...
>
> ....Subject to the necessity for maintaining military security, freedom of speech, press and religion shall be permitted, and religious institutions shall be respected. Subject likewise to the maintenance of military security, the formation of free trade unions shall be permitted.

The Soviet Union, in its administration of East Germany, has violated these principles both in spirit and in letter. In 1946 the Soviet authorities forced the merger of the Socialist Party of Germany with the Communist Party of Germany, forming the SED or Socialist Unity Party, with the aim of "capturing" the Socialist voters of Berlin and the East Zone. Although they did not succeed in taking control of the SPD of Berlin, they were able to veto the election of the SPD leader Ernst Reuter as Governing Mayor of Berlin in June 1947. In the Eastern Zone of Germany the so-called German Democratic Republic was set up in October 1949 by Soviet order, without prior discussion or free elections. The regime's first elections, held in the following year, were of the single-list variety carried on under the "bloc-party" system and the National Front, a communist cover organization.

Individual liberties, though ostentatiously displayed in the East German Constitution, have never been protected. Soviet military forces cooperated with the East German regime in putting down the uprisings and strikes which occurred in June 1953. The free flow of information and free expression essential to democratic life has not been permitted in the East Zone, and Western radio transmissions have been extensively jammed.

Economic Policies. The Potsdam Protocol provided both for reparations from Germany and for measures of essential economic reconstruction. It was understood and agreed at Potsdam that successful implementation of these measures required cooperation and "common policies" in regard to basic economic functions. The Protocol stated specifically:

> ....During the period of occupation Germany shall be treated as a single economic unit.

Almost from the beginning the Soviet authorities obstructed efforts to implement this principle. In their own zone they pursued a unilateral economic policy and raised

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barriers to the flow of trade across zonal borders. Western suggestions, such as that to place manufactures from East Germany in a common pool in order to cover the cost of essential imports, were defeated by Soviet delaying tactics. Depending traditionally upon food from Eastern Germany, the area under United States control was able to survive by means of extensive American subsidy.

An essential aspect of the over-all economic problem was the question of reparations. The Potsdam Protocol stated:

> ....In addition to the reparations to be taken by the USSR from its own zone of occupation, the USSR shall receive additionally from the Western Zones:
> (a) 15 percent of such usable and complete industrial capital equipment... as is unnecessary for the German peace economy and should be removed from the Western Zones of Germany, in exchange for an equivalent value of food, coal, potash, zinc, timber, clay products, petroleum products, and such other commodities as may be agreed upon.
> (b) 10 percent of such industrial capital equipment as is unnecessary for the German peace economy and should be removed from the Western Zones, to be transferred to the Soviet Government on reparations account without payment or exchange of any kind in return.

Also,

> ....Payment of reparations should leave enough resources to enable the German people to subsist without external assistance. In working out the economic balance of Germany the necessary means must be provided to pay for imports approved by the Control Council in Germany. The proceeds of exports from current production and stocks shall be available in the first place for payment for such imports. /This was not to apply to equipment and products, noted above, received as additional reparations by the USSR from the Western zones./

No effort was made by the Soviet Union to abide by these provisions. In their own zone Soviet authorities not only refused to account for reparations exacted but also removed large quantities from current production, thus preventing the use of these commodities for payment for necessary imports. Moreover, the Soviet Union failed to make deliveries of food, coal, potash, zinc, timber and other raw materials from its own zone in exchange for shipments of industrial equipment from the Western zones. By contrast, the United States, between March 31 and August 1, 1946, had made shipments from its zone to the USSR of 11,100 tons of reparation equipment. After continued Soviet failure to meet these obligations, the United States suspended reparations deliveries until such time as the USSR would be willing to implement fully the provisions of the Protocol.

Demilitarization. The Potsdam Protocol provided for the "complete disarmament and demilitarization" of Germany. Provisions to this end included the following:

> All German land, naval and air forces...and all other military and quasi-military organizations, together with all clubs and associations which serve to keep alive the military traditions in Germany, shall be completely and finally abolished in such manner as permanently to prevent the revival or reorganization of German militarism and Nazism.

In 1948 Soviet authorities began building up a sizeable "police force" in the Soviet Zone. In May 1950 the United States protested this process of remilitarization, pointing out that some 40,000 to 50,000 members of the so-called "Police Alert Units," equipped

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with Soviet weapons, were receiving infantry, armored and artillery training. At the end of 1953 the Soviet Zone's "police force" numbered 100,000 men (for a population of 17 million), with an additional 140,200 military personnel, including 3 mechanized divisions and air units. By June 1959 East German military and paramilitary forces totalled more than 700,000 men.1

Eastern Frontiers. The conference at Potsdam also considered the question of the future German-Polish boundary, and included the following statement in the Protocol.

> ....The three Heads of Government reaffirm their opinion that the final delimitation of the Western frontier of Poland should await the peace settlement.

On July 6, 1950, an agreement was signed between the Soviet-controlled regimes of Poland and East Germany fixing the Oder-Neisse as the definitive frontier between Poland and Germany.

2. Occupation and Control of Germany

On September 12, 1944, representatives of the Soviet Union, the United States and the United Kingdom signed a Protocol on the Zones of Occupation in Germany, which was amended subsequently to include France. The Protocol in its final form established the four zones of occupation and the special joint occupation for the Berlin area. Paragraph 5 of the Protocol provides:

> An Inter-Allied Governing authority (Komendatura) consisting of four Commandants, appointed by their respective Commanders-in-Chief, will be established to direct jointly the administration of the "Greater Berlin" Area.

The Soviet Union was also signatory to the Agreement of May 1, 1945, which stated:

> Supreme authority in Germany will be exercised on instructions from their respective governments, by the Commanders-in-Chief of the armed forces of the United States of America, the United Kingdom and the Union of Soviet Socialist Republics, /and/ the Provisional Government of the French Republic each in his own zone of occupation, and also jointly, in matters affecting Germany as a whole, in their capacity as members of the supreme organ of control constituted under the present Agreement.

With regard to Berlin, the Agreement stated:

> An Inter-Allied Governing Authority (Komendatura) consisting of four Commandants, one from each Power, appointed by their respective Commanders-in-Chief, will be established to direct jointly the administration of the "Greater Berlin" area. Each of the Commandants will serve in rotation, in the position of Chief Commandant, as head of the Inter-Allied Authority.

Almost from the beginning the Soviet representatives on the Allied Control Council and the Komendatura carried out obstructionist tactics, as described above, and in Berlin the communist controlled police of the Soviet sector refused to be bound by the legal

1. On the same date the Federal Republic, nearly three times larger in population, had 235,000 men under arms, together with 14,000 police and 12,000 frontier guards. --Statement by Secretary of State Herter at the Foreign Ministers' Conference, Geneva, May 25, 1959; Washington Post and Times Herald, May 26, 1959.

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controls authorized by the Allied Komendatura. On March 20, 1948, the Soviet representatives walked out of the Allied Control Council and on April 1 imposed rail and road restrictions on Allied traffic to Berlin. On June 16, 1948, the Soviet representatives left the Komendatura and 10 days later imposed a total blockade of Berlin. On July 1, 1948, the chief Soviet representative in the Komendatura announced that the four-power administration of Berlin was terminated. On November 30, 1948, the German Communists set up their own city government in the Soviet sector of Berlin, thus completing the division of Berlin into East and West zones.

On May 4, 1949, after the Western powers had demonstrated their determination to retain their legal rights in Berlin by supplying the city by air, the Governments of the Soviet Union, the United States, the United Kingdom, and France reached an agreement at New York, which was confirmed subsequently at the Council of Foreign Ministers at Paris. Among other provisions, the New York agreement stated:

> All the restrictions imposed since March 1, 1948, by the Government of the Union of Soviet Socialist Republics on communications, transportation, and trade between Berlin and the Western zones of Germany and between the Eastern zone and the Western zones will be removed on May 12, 1949.

In addition, the agreement reached at Paris specified:

> ...in order to improve and supplement this and other arrangements and agreements as regards the movement of persons and goods and communications between the Eastern zone and the Western zones and between the zones and Berlin and also in regard to transit, the occupation authorities, each in his own zone, will have an obligation to take the measures necessary to insure the normal functioning and utilization of rail, water, and road transport for such movement of persons and goods and such communications by post, telephone, and telegraph.

On July 23, 1955, the heads of government of the United States, the USSR, France, and the United Kingdom issued the following statement at Geneva:

> The Heads of Government, recognizing their common responsibility for the settlement of the German question and the reunification of Germany, have agreed that the settlement of the German question and the reunification of Germany by free elections shall be carried out in conformity with the national interests of the German people and in the interests of European security.

That the Soviet Union had no intention of carrying out this promise was made clear less than four months later at the meeting of Foreign Ministers in Geneva. On November 8, 1955, Molotov stated:

> ...such a mechanical merger of the two parts of Germany be means of so-called "free elections"...could lead to the violation of the vital interests of the working masses of the German Democratic Republic, to which one cannot agree.

Since that time, the Soviet Union has consistently rejected all attempts to solve the German problem except on its own terms, and in recent months has sought to impose its "solution" on the Western powers by unilateral action in total disregard of its treaty commitments. On November 27, 1958, the Soviet Government notified the Government of the United States that it regarded the agreements on Germany of September 12, 1944 and May 1, 1945 as "null and void," and announced its intention of turning over its functions within Berlin and in regard to access to the city to the so-called German Democratic Republic. The Western powers have refused to accept any such unilateral action on the part of the USSR.

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Agreements on Prisoners of War

The terms for the surrender of Japan were defined in the Proclamation of July 26, 1945, issued by the United States, Britain, and China. The Soviet Union, in declaring war upon Japan on August 8, 1945, announced that it had joined in the Allied Proclamation of July 26. Point 9 of the Proclamation stated:

> The Japanese military forces, after being completely disarmed, shall be permitted to return to their homes with the opportunity to lead peaceful and productive lives.

In May 1949, following a Japanese statement that 376,929 Japanese prisoners were still being held, the official Soviet news agency admitted that 95,000 Japanese prisoners were still in the Soviet Union. In 1957 the Japanese stated that 8,069 Japanese citizens continued to be detained in the Soviet Union and Outer Mongolia, 2,629 in North Korea, and 1,392 in Sakhalin and the Kurile Islands.

The release of German prisoners of war was discussed in 1947 at the Council of Foreign Ministers, which reached agreement that:

> German prisoners of war located in the territory of the Allied Powers and in all other territories will be returned to Germany on December 31, 1948.

The Soviet Union reaffirmed this obligation in submitting its plan for repatriation on June 30, 1947.

On January 3, 1949, the United States protested to the Soviet Union for its failure to furnish information on its repatriation of war prisoners. The United States note stated:

> ....on the basis of the Soviet Government's statement at the Council of Foreign Ministers in Moscow that 890,532 war prisoners were still held by the Union of Soviet Socialist Republics at that time, only some 447,387 are officially known to have been repatriated to Germany.

In its note of January 24, 1949 to the United States, the Soviet Government promised that "...repatriation of war prisoners will be completed during 1949."

In 1957 the United Nations Ad Hoc Commission on Prisoners of War received a memorandum from the Federal Republic of Germany which stated:

> In the course of German-Soviet negotiations in Moscow in September 1955, the Soviet Government declared itself willing to release 9,626 prisoners of war. However, the assurance was also given that any additional persons would be released who might be traced in the Soviet Union on the basis of relevant German lists, provided such persons had German nationality..

According to the memorandum, only 1,772 prisoners had been returned since September 1956. The Soviet Government had refused to repatriate more than 100,000 German war and civilian prisoners who had been forced to settle in the USSR following the elimination of certain forced labor camps on the grounds that they had acquired Soviet nationality. The Soviet Union had supplied no information on the whereabouts of 87,353 prisoners of war and 16,480 German civilians known to have been in Soviet captivity at one time or another; 75 German scientists, whose work contracts had expired long previously, were being detained at Sukhmi.

The Ad Hoc Commission on repatriation of war prisoners reported in September 1957 that the Soviet Government had not even replied to a request to discuss the matter at Geneva.

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China

The Treaty of Friendship and Alliance, concluded on August 14, 1945, between the Soviet Union and the Republic of China contained, among others, the following provisions.

> Article V. The High Contracting Parties, having regard to the interests and security and economic development of each of them, agree to work together in close and friendly collaboration after the coming of peace and to act according to the principles of mutual respect for their sovereignty and territorial integrity and of non-intervention in the internal affairs of the other Contracting Party.
>
> Article VI. The High Contracting Parties agree to afford one another all possible economic assistance in the postwar period in order to facilitate and expedite the rehabilitation of both countries and to make their contribution to the prosperity of the world.
>
> Article VIII. The Treaty...shall remain in force for a term of thirty years.

In the exchange of notes accompanying the treaty, Foreign Minister Molotov stated:

> ....The Government of the USSR agrees to render to China moral support and aid in military supplies and other material resources, such support and aid to be entirely given to the National Government as the Central Government of China.

The Soviet Union began to disregard these provisions almost immediately.

(1) In its occupation of Manchuria, commencing in 1945, the Soviet authorities removed from Manchuria assets valued at $858,000,000 in the form of mining equipment, rolling stock, steel mills, electric power generators, and other equipment.

(2) The Soviet Government made available to the Chinese Communists extensive stocks of Japanese arms and other equipment to be employed against the National Government.

The Unification of Korea

At the Conference of Foreign Ministers in Moscow in December 1945, the Soviet Union, together with the United States and the United Kingdom, agreed to the establishment of a free and independent Korea. The Report of the Conference, dated December 27, 1945, stated that, "with a view to the re-establishment of Korea as an independent state," there should be established a "provisional democratic Korean government." Further:

> In order to assist the formation of a provisional government and with a view to the preliminary elaboration of the appropriate measures, there shall be established a Joint Commission consisting of representatives of the United States command in southern Korea and the Soviet command in northern Korea. In preparing their proposals the Commission shall consult with the Korean democratic parties and social organization...
>
> It shall be the task of the Joint Commission, with the participation of the provisional Korean democratic government and of the Korean democratic organization, to work out measures also for helping and assisting (trusteeship) the political, economic and social progress of the Korean people, the development of democratic self-government and the establishment of the national independence of Korea.

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The Soviet Union from the start thwarted the implementation of this agreement. Its representative on the Joint Commission refused to recognize as "democratic" any parties and organizations not under Soviet control. It prevented UN-sponsored elections in northern Korea, and established there its own regime, the so-called Democratic People's Republic of Korea which claimed jurisdiction over the entire country. On June 25, 1950, this regime, armed and encouraged by the Soviet Union, attacked the Republic of Korea.

Soviet Pledges in Hungary

On October 30, 1956, the Government of the USSR made a public declaration, printed the following day in Pravda, which stated:

> Having in mind that the further presence of Soviet military units in Hungary could serve as an excuse for further aggravation of the situation, the Soviet Government has given its military command instructions to withdraw the Soviet military units from the city of Budapest as soon as this is considered necessary by the Hungarian Government.
>
> At the same time the Soviet Government is prepared to enter into the appropriate negotiations with the Government of the Hungarian People's Republic and other members of the Warsaw Treaty on the question of the presence of Soviet troops on the territory of Hungary.

The Soviet Union not only broke the pledge, but deliberately used it as a cover in order to crush the revolt in Hungary.

(1) On October 31, 1956, the Soviet Army began strengthening its forces in Hungary.

(2) On November 3, 1956, under pretext of negotiating the withdrawal of Soviet troops, Soviet authorities arrested the Hungarian representatives, led by Colonel Pal Maleter, who had been sent to carry on the negotiations.

(3) On November 4, 1956, Hungarian Premier Imre Nagy broadcast the following statement:

> In the early hours of this morning the Soviet troops launched an attack against our capital city with the obvious intention of overthrowing the lawful, democratic, Hungarian Government. Our troops are fighting. The government is in its place. I inform the people of the country and world opinion of this.

(4) On June 16, 1958, the Hungarian Communist regime of Janos Kadar, who had personally pledged the safety of Imre Nagy after the suppression of the revolt, announced the execution of Nagy and of his associates, Pal Maleter, Jozsef Szilagyi, and Miklos Gimes.

Credit Agreement with Yugoslavia

On January 12, 1956, the Soviet Union and Yugoslavia concluded an agreement under which Yugoslavia was to receive Soviet credits for economic construction and expansion. By the agreement of August 3, 1956, Yugoslavia recieved a further credit of $175 million, to be provided jointly by the USSR and its East German satellite, for construction of an aluminum combine.

In the spring of 1958 the Soviet Union, which had become increasingly disgruntled with Yugoslavia's ideological independence, endeavored to employ its credit agreement as a political weapon. Pravda, on May 9, 1958, noting that "ideological differences" lead to differences on political issues," threatened in a thinly veiled fashion that economic assistance might be terminated if the Yugoslav ideological line were not changed. On May 27, 1958, Foreign Minister Gromyko handed to the Yugoslav Ambassador a note announcing the unilateral suspension for "five years" of Soviet and East German deliveries under the 1956 credit agreements.

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SOVIET MANPOWER[1]
1960 - 70

FOREWORD

This report shows the changes in the population and labor force of the USSR that are expected to take place between 1960 and 1970. For purposes of comparison, data also are presented for earlier years.

The USSR has already taken steps to cope with the two most important manpower problems that will be encountered during the 1960's -- the small increments to the population of working age during 1960-65 and the effective use of the huge labor force living on farms. By reducing the armed forces and by controlling the rate of school enrollment among youths during 1956-60, the USSR has succeeded in providing enough additional labor to overfulfill its manpower and production plans in spite of a continuous decline in the increments to the population of working age resulting from the low birth rates of World War II. The number of persons on farms is expected to be almost as large in 1970 as in 1960. By promoting industrial and construction activities in rural areas, the USSR has attempted to employ surplus agricultural workers on the farms, thus keeping rural-to-urban migration at a minimum and avoiding the necessity for providing more housing and public utilities in the already overcrowded cities.

The estimates for the 1950's are based on statistics that have appeared in official Soviet publications. The outlook for the 1960's is based on the following assumptions:

1. That birth rates (by age of mother) will remain at present levels but that death rates will decline slowly,

2. That the goals announced for the Seven Year Plan (1959-65) relating to manpower and education will be achieved and that the trends established in the first half of the decade will continue until 1970,

3. That the planned reduction in the armed forces by 1.2 million during 1960-61 will take place,

4. That no major war or other cataclysmic event will occur.

[1]Central Intelligence Agency, May 1960.

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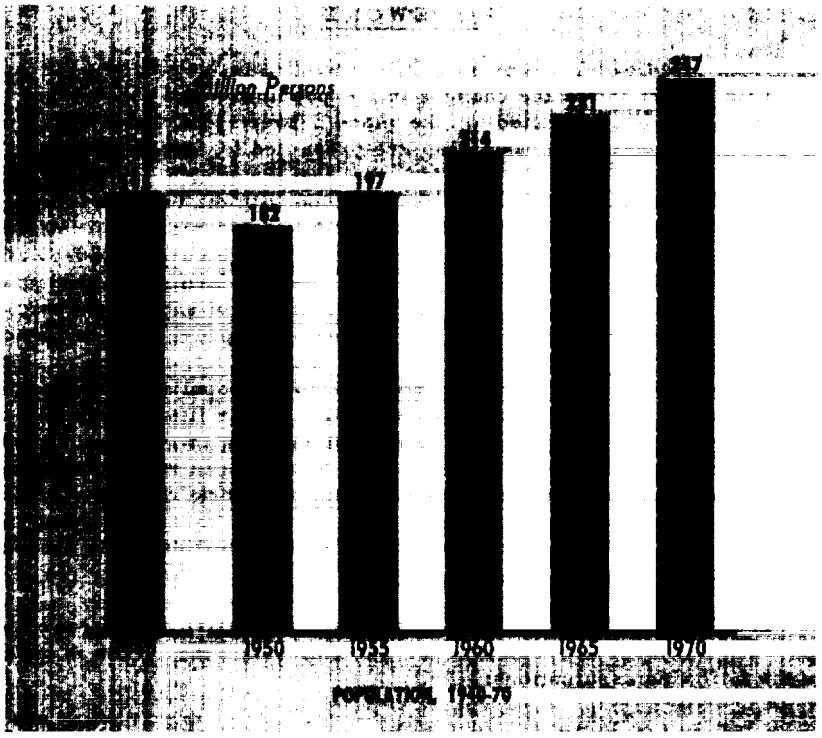
THE POPULATION WILL INCREASE FROM 214 MILLION TO 247 MILLION DURING THE 1960's



World War II had a catastrophic effect on the population of the USSR. The population (within the present boundaries of the country) fell from 195 million in 1940 to about 175 million in 1947.* The 1940 level was not regained until 1954.

In addition to the enormous military and civilian losses attributable to the war, birth rates fell to less than half their prewar level and did not recover that level until about 1950. The small number of children born during the war years has already posed periodic problems for

* All population estimates in this report are midyear figures.

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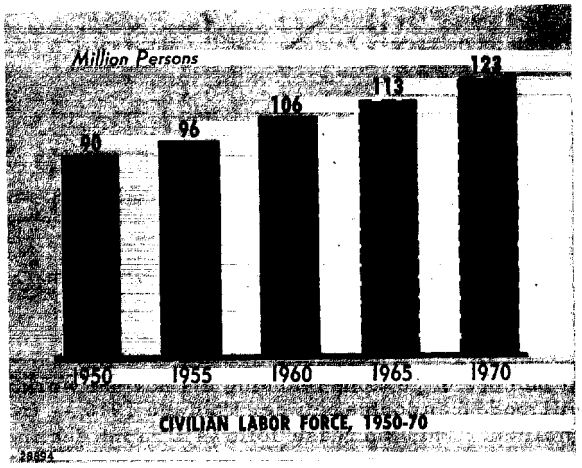
Soviet leaders as the groups reached elementary school, high school, and working age. These small groups will be marrying and having children during the 1960's. As they replace the larger, prewar groups, the rate of growth of the population will temporarily decline.

For the decade of the 1960's as a whole, the population will increase at an average annual rate of 1.5 percent -- a little more slowly than during the 1950's.

THE CIVILIAN LABOR FORCE WILL GROW BY ABOUT 17 MILLION, OR 16 PERCENT, DURING THE 1960's



The civilian labor force of the USSR will increase by about 17 million during the 1960's, only 1 million more than the increase during the 1950's. Growth will be slower in the first half of the decade than in the second because the age groups starting to work during 1960-65 will be the unusually small groups born during the war and the early postwar period. The increase will be enough, however, to permit the achievement of the manpower goals set by the Seven Year Plan (1959-65).

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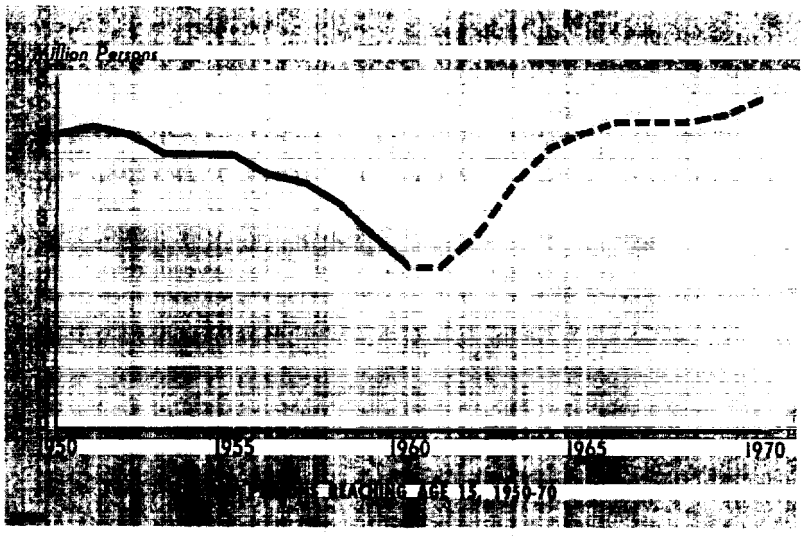
THE NUMBER OF PERSONS REACHING WORKING AGE WILL BEGIN TO RISE IN 1962, FOLLOWING A SHARP DECLINE DURING THE 1950's



The total number of persons reaching the normal working age of 15 in the USSR will more than double between 1960 and 1970 -- from 2.3 million to 4.7 million. This increase follows a rapid decline during the 1950's, particularly in the latter half of the decade. These fluctuations result from the sharp decline in the birth rate during 1940-45 and its subsequent rise.

The decline in the number of 15-year-olds would have resulted in a much slower growth in the labor force than actually occurred if the USSR had not taken steps to increase the labor supply. By controlling school enrollment and by reducing the armed forces, however, the USSR has been able to keep its civilian labor force growing at a fairly even pace.

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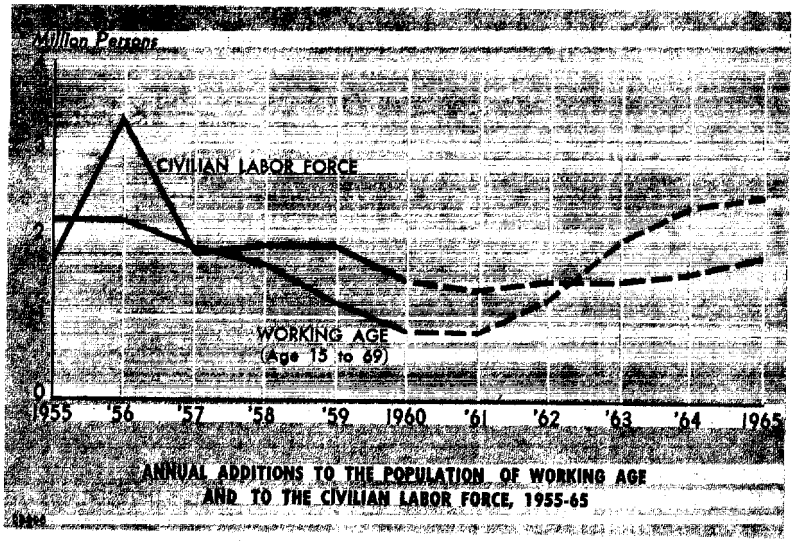
DECLINING SCHOOL ENROLLMENT AND REDUCTIONS IN THE ARMED FORCES ARE ALLOWING THE CIVILIAN LABOR FORCE TO INCREASE STEADILY DURING THE PERIOD OF "POPULATION SHORTAGE"



Between 1955 and 1960 the civilian labor force of the USSR increased by 10 million, but the population of working age (15 to 69) increased by only 7.4 million. At the same time, the number of persons of working age in day schools and colleges declined, and the armed forces were reduced.

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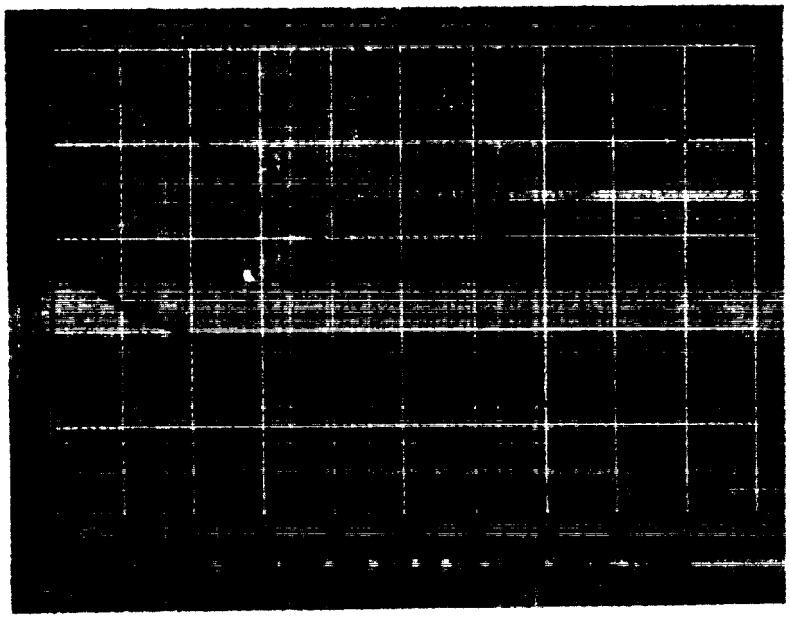

The decrease in day school enrollment resulted both from a decline in the number of persons of high school age and from a decline in the proportion enrolled. More young people thus became available for work. This downward trend in school enrollment is expected to be reversed in the early 1960's, when the number of 15-year-olds begins to rise and when the current reorganization of education is completed.

Between 1955 and 1960 the armed forces decreased by more than 2 million persons, and the Soviet government has announced plans to cut the armed forces by an additional 1.2 million during 1960-61 -- years when the additions to the population of working age will be the lowest (fewer than 1 million each year).

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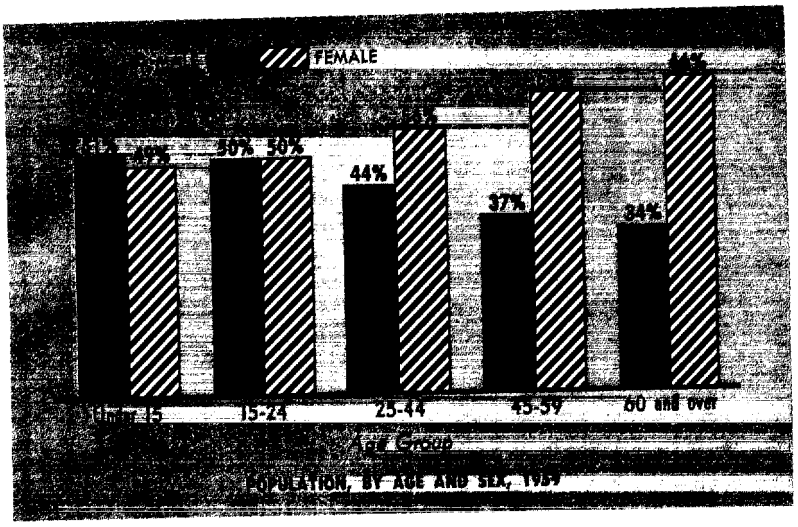
WOMEN FAR OUTNUMBER MEN IN THE POPULATION AND IN THE KEY WORKING AGES



Women constitute 55 percent of the total population of the USSR -- one of the highest percentages in the world. In the age group 25 to 59, there are 139 women for each 100 men. The heavy preponderance of women in these ages is a consequence of the disproportionate losses of men during World War II and also during the collectivization drive of the 1930's. By 1970, women will constitute 53 percent of the population.

The age structure of the population will not change greatly during the 1960's. About the same proportion will be in the working ages 15 to 69 in 1970 as now, but women will be a smaller part of the total.

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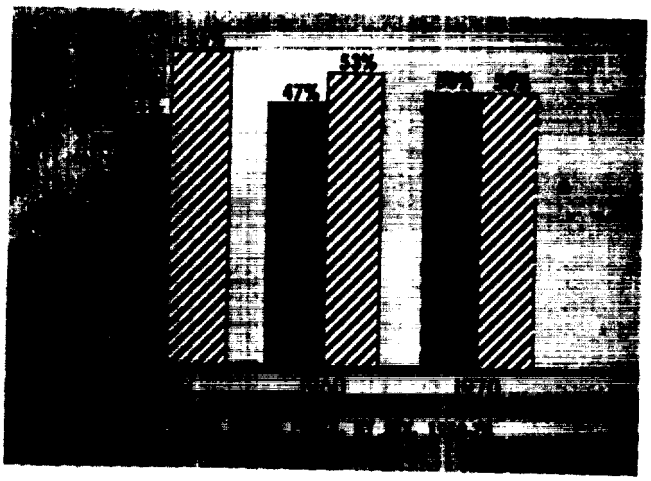
MORE THAN HALF OF ALL SOVIET WORKERS ARE WOMEN



Women now make up more than half of the civilian labor force of the USSR, but their predominance is gradually diminishing. By 1970 the labor force will be about equally divided between men and women.

Nearly two-thirds of the number of Soviet women 14 years of age and over currently participate in the labor force. Women probably will continue to participate at this high rate during the 1960's. The percentage could rise even higher, for Soviet leaders have established as an ultimate goal the almost universal participation of women in employment outside the home. Soviet plans call for more kindergartens, nurseries, boarding schools, and public dining facilities to make it possible for more women to work.

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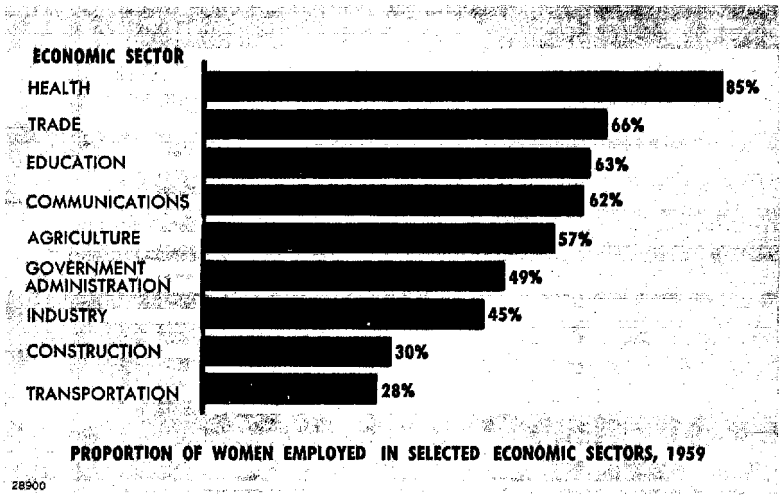
WOMEN ARE EMPLOYED EXTENSIVELY IN ALL BRANCHES OF THE ECONOMY



Some sectors of the Soviet economy, such as trade, education, and health, are staffed largely by women. In 1959, about three-fourths of all doctors and about 70 percent of all teachers were women. Although women accounted for about 57 percent of total agricultural employment in 1959, the proportion has been declining steadily and will continue to decline during the 1960's. Even in those sectors where women do not predominate, such as construction and transportation, they nevertheless constitute more than one-fourth of the total.

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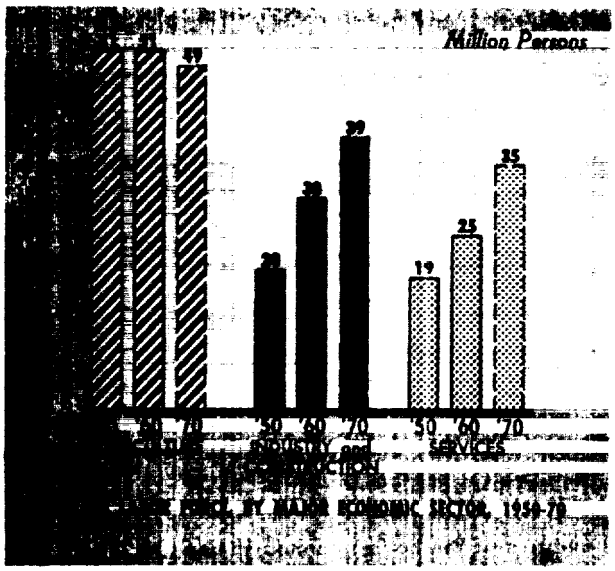
NEARLY HALF OF THE CIVILIAN LABOR FORCE IS EMPLOYED IN AGRICULTURE



More than 50 million people in the USSR -- nearly half of the total labor force -- are engaged in agriculture. This figure represents the number of persons 14 years old and over who live on collective and state farms and who participate in normal farm activities at some time during the year. It also includes unpaid family workers who live on those farms and who work exclusively on private plots -- still an important source of agricultural production in the USSR.

A little more than one-fourth of the labor force is employed in industry and construction, and somewhat less than one-fourth is employed in the service sector. Slightly more than half of all workers in the services are employed in education, health, and trade, and about one-fourth are employed in transportation and communications.

Agricultural employment is expected to resume its historic downward trend during the 1960's after a temporary interruption during the mid-1950's, when Khrushchev's "new lands" program added several million

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people to Soviet farms. In 1970, agricultural employment will still be high, constituting 40 percent of the civilian labor force.

Employment in the services, which increased by 32 percent in the 1950's, will increase by 40 percent during the 1960's. By 1970, 28 percent of the labor force will be working in service activities compared with 21 percent in 1950. Nevertheless, more people will still be employed in the nonagricultural productive industries (manufacturing, mining, and construction) than in the services.

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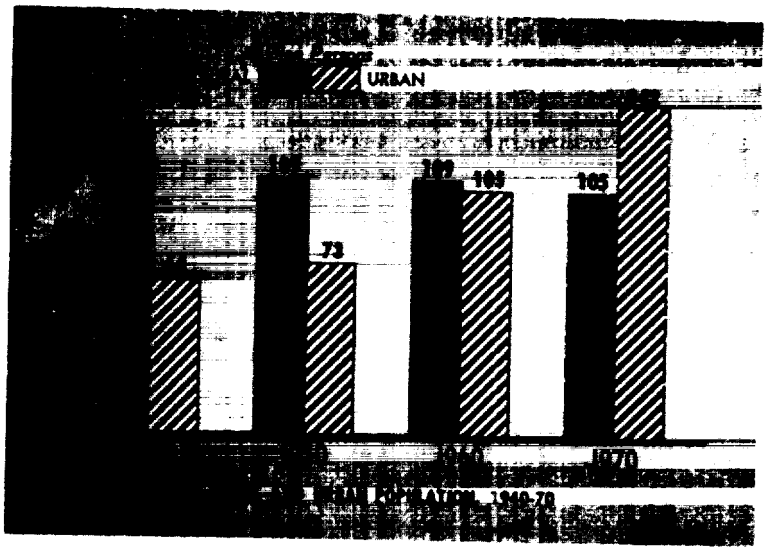
THE RURAL POPULATION WILL CONTINUE TO DECLINE AS A PROPORTION OF THE TOTAL



The rural population of the USSR is expected to drop from 51 percent of the total in 1960 to 43 percent in 1970. Early in the decade the urban population for the first time will exceed the rural population.

Post-Stalin agricultural policies reduced the rate of rural-to-urban migration, resulting in the same rural population in 1950 and 1960. The rural population is expected to drop slowly to about 105 million by 1970.

Although Soviet agriculture probably will achieve sizable gains in productivity during the 1960's, the integration of surplus unskilled farm labor into the urban labor force will present difficult problems. Khrushchev has talked about urbanizing the countryside by developing "farm-cities" at existing farm sites, thus avoiding the necessity for providing additional housing and public utilities in already crowded urban areas. These farm-cities would provide training for jobs in industry and services for farm workers who become surplus through mechanization. Some such scheme may be necessary to cope with the anomaly of a huge farm labor force and a huge rural population in a country undergoing rapid industrialization.

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THE EDUCATIONAL LEVEL OF THE POPULATION AND LABOR FORCE IS STILL LOW

Some idea of the educational level of the Soviet labor force may be obtained from the data on educational attainment of the entire adult population given in the 1959 census. In 1959, only 2.6 percent of the population 15 years old and over had graduated from college, and 60.5 percent had not even completed elementary school (7 years). Considerable educational progress was achieved by the USSR during the decade of the 1950's, after the 7-year elementary school was made compulsory in 1949. Even greater progress probably will be made during the 1960's, when an 8-year elementary education is scheduled to become compulsory.

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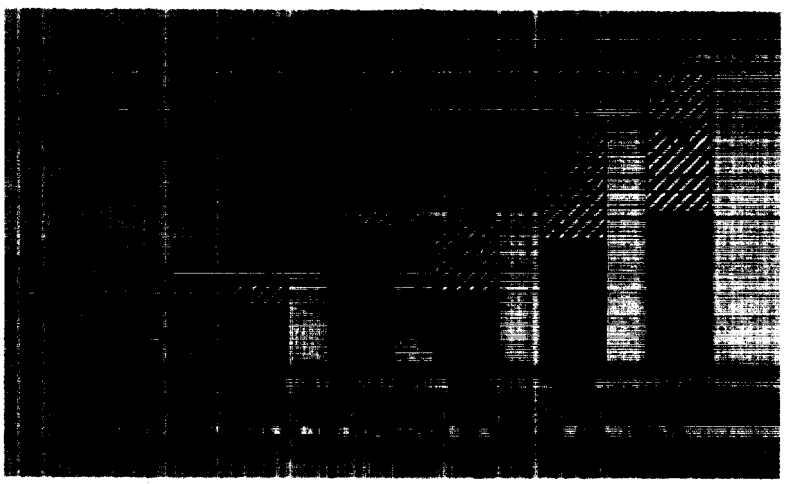
THE PACE OF EDUCATIONAL PROGRESS WILL BE STEPPED UP SHARPLY DURING THE 1960's — EVENING SCHOOL ATTENDANCE IN HIGH SCHOOLS AND COLLEGES WILL PLAY A MAJOR ROLE



High school and college enrollment in the USSR will rise rapidly during the 1960's. The USSR is currently reorganizing its school system to place more emphasis on vocational education in high schools and on evening enrollment in both high schools and colleges. The 7-year elementary schools are to become 8-year schools, and attendance will be compulsory. The projected rise in day school enrollment during the early 1960's will result from the increased attendance in the eighth grade of the reorganized elementary schools as well as from the larger proportion of persons of high school age in the population. During the 1960's, 3.5 million to 4 million persons will be graduating from college compared with 2.5 million during the 1950's.

High school education is to be made "universally available" but not compulsory. The USSR also is tightening the controls over school enrollment to provide a more effective means of manipulating school enrollment in accordance with the need for labor. State authorities will decide whether graduates from the eighth grade are to go to work, to high school, or to a trade school. Those who go directly to work will be encouraged to attend evening classes. Enrollment in evening schools will expand almost as rapidly as that in day schools.

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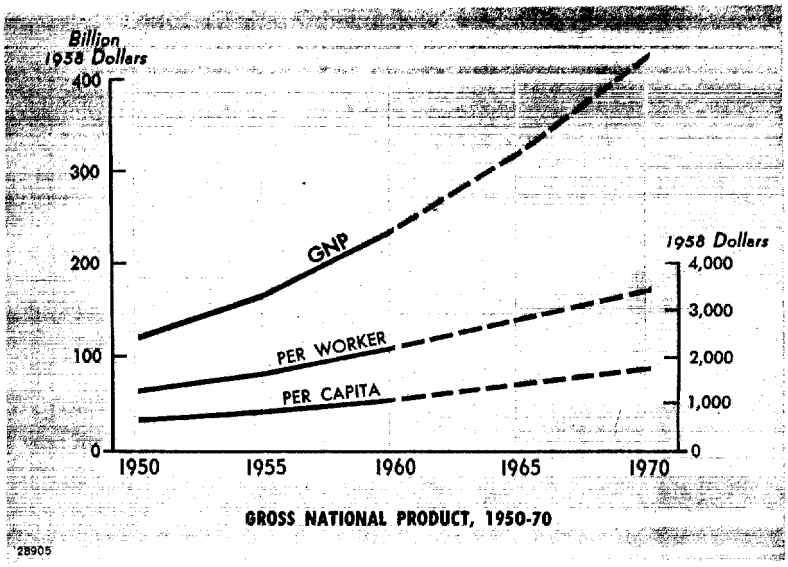
GROSS NATIONAL PRODUCT AND PRODUCTIVITY WILL CONTINUE TO RISE RAPIDLY



The continued rise in the level of education and skill of the Soviet labor force, along with progress in technology, should permit productivity to rise rapidly. Gross national product (GNP) is expected to increase about 6 percent annually during the 1960's, a little more slowly than during the 1950's. GNP per capita and GNP per worker (which is a rough measure of productivity) will each increase about 4.5 percent annually.

The high rate of increase in GNP should permit consumption per capita to increase substantially. By 1970 the standard of living of the average Soviet worker probably will be about 40 percent higher than the present level.

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FRANCIS GARY POWERS

HEARING

BEFORE THE

COMMITTEE ON ARMED SERVICES

UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

FRANCIS GARY POWERS

MARCH 6, 1962

Printed for the use of the Committee on Armed Services

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FRANCIS GARY POWERS

TUESDAY, MARCH 6, 1962

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C.

The committee met, pursuant to call, at 2 p.m., in room 318, Old Senate Office Building.

Present: Senators Russell (chairman), presiding; Byrd of Virginia, Stennis, Symington, Jackson, Ervin, Thurmond, Byrd of West Virginia, Saltonstall, Smith of Maine, Case of South Dakota, Bush, Beall, and Goldwater.

Also present: William H. Darden, T. Edward Braswell, Jr., Gordon A. Nease, professional staff; Harry L. Wingate, Jr., chief clerk; and Herbert S. Atkinson, assistant chief clerk.

Chairman RUSSELL. I have been requested by Senator Cannon, a member of this committee, who is always most diligent in attending the sessions, to announce that, due to his attendance at the War College at Maxwell Field on national security matters, he will be unable to be here this afternoon.

That will be all for these cameras.

I will ask the officers to see that that rule is enforced and that no further pictures are taken.

If you need any additional policemen for that purpose, we will summon them.

The Armed Services Committee, through the Central Intelligence Agency, has extended to Mr. Francis Gary Powers an invitation to appear here in open session this afternoon.

Before we hear from Mr. Powers, the Chair would like to make a very short statement concerning the circumstances of this hearing.

The Chair believes it can be fairly stated that this committee and its subcommittees have attempted to deal with subjects involving the Central Intelligence Agency and, indeed, all matters affecting the national security, in an unspectacular manner.

Accordingly, to some, it may appear that this hearing in the caucus room, under these circumstances, is somewhat uncharacteristic of the proceedings of this committee.

In this instance, however, the correction of some erroneous impressions and an opportunity for Mr. Powers to reveal as much of his experience as is consistent with security requirements make it apparent that a hearing of this type at this time is not only in the national interest, but is in the interest of fair play for Mr. Powers.

And if this committee needs any defense, the Chair will state that in scheduling this hearing, this committee has not been motivated by any spirit of self-aggrandizement.

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Mr. Powers, after having been subjected to a public trial in Moscow, you should feel no trepidation whatever in appearing before a group of your fellow citizens and elected representatives.

I hope that you feel just as much at ease as you possibly can.

I understand from Senator Byrd that you are a Virginia boy. What part of Virginia are you from?

STATEMENT OF FRANCIS GARY POWERS, ACCOMPANIED BY LAWRENCE HOUSTON, GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY

Mr. POWERS. I spent most of my life in the southwest part of Virginia, around Pound and Grundy, Va.

Chairman RUSSELL. Were you educated in Virginia?

Mr. POWERS. Through grammar school and high school in Virginia and college in Tennessee.

Chairman RUSSELL. What did you do after you left college?

Mr. POWERS. I worked for one summer as a lifeguard at the swimming pool near my home in Virginia, joined the Air Force in October of that year.

Chairman RUSSELL. When were you first employed by the CIA?

Mr. POWERS. In May of 1956.

Chairman RUSSELL. You were an experienced pilot at the time you were employed by the CIA; were you not?

Mr. POWERS. Yes, sir. I don't remember the exact number of hours, but I have had well over a thousand hours of flying time.

Chairman RUSSELL. How much experience did you have with the U-2?

Mr. POWERS. A little better than 500 hours flying time.

Chairman RUSSELL. Now, Mr. Powers, we would like to have you go ahead and tell us in your own words of your mission on the 1st of May 1960.

If you could pull up the microphone a little closer I think some of the members of the committee perhaps will hear you a little better.

Mr. POWERS. I was awakened on the morning of May 1, sometime between 2 and 3 o'clock in the morning. I knew before that I might have to fly the next day but I wasn't certain at the time.

I had breakfast. The doctor looked me over. I was feeling fine. The navigator gave me a briefing either before or during the time that I was prebreathing for this flight. He showed me the maps, the route that I would take, the turning points, the different headings, and where the equipment was to be turned off and on. Later I talked to the weather forecaster who gave me the probable weather conditions along the route, the weather at destination, how high to expect condensation trails.

Then, after that, I talked to the detachment commander who told me what I was to do in case of an emergency, in case of engine trouble, or a forced landing over enemy territory. This was both before I put on my pressure suit and while I was prebreathing the oxygen.

Somewhere, I suppose about 5:30 in the morning, I finished dressing and was taken to the aircraft. I climbed into the aircraft and waited—I had to wait for signal before starting the engine and before taking off. The signal came a little late. I don't remember exactly how late, but it was later than scheduled.

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I took off, climbed on course. I remember that the condensation trails were a little higher than I had been told they would be, but not much. I climbed above this layer and reached my altitude and continued on course. The weather was cloudy underneath. I couldn't see the ground for over an hour, and I drifted right off course. There was a clear area near the Ural Sea where I corrected back toward course but never did get exactly back on course before I got over the clouds again.

It was in this area that I saw two condensation trails from jet aircraft, so I knew at this time—they appeared to be paralleling my course. The first one headed in exactly the opposite direction as myself, and a few minutes later, I assume it was the same aircraft passed me going on the same heading that I was going on. He made no maneuvers that I could tell and I never did see the aircraft itself, just the condensation trail.

Chairman RUSSELL. Did you estimate his altitude?

Mr. POWERS. He was well below me. I felt fairly good at the time. I was well above the condensation trail layer and I don't think he ever saw me if he was looking for me. I got back over the clouds there, made a correction for the wind, but I still drifted to the right of course. I would say approximately 200 miles south of Sverdlovsk the clouds ended, and I corrected back to course and was on course the rest of the flight. Just about the time that the clouds ended, I began having a little autopilot trouble. It wasn't very bad at the time so I just disengaged the autopilot, a few minutes later reengaged it and it worked for about 10 minutes and I had the same trouble again.

I went through this procedure two or three times and finally decided not to use it any more, and I'd say the last 15, 20, or 30 minutes was flown by hand without the autopilot.

Weather in this area was perfectly clear, visability was excellent. I saw no other condensation trails from other aircraft. I was on very close to course all the way. I got to, I would say, within 30 or 40 miles of Sverdlovsk probably as well as I can remember southeast of the city, made a turn to the left of approximately 90°, rolled out on course, lined up on my next flight line. I was to go over the southern edge of the city—the southwestern edge of the city.

I can remember seeing an airfield there that was not on my map. After making this turn, I had to record the time that I reached this particular point, the engine instrument readings, the exhaust gas temperature, the altitude, several things, I don't remember exactly what they all were, and I was doing this at the time that I heard and felt this explosion.

It was approximately a minute after I had rolled out of this turn. I can't be sure of the times there. It is hard to recall just exactly what sensation I had at this time. I can remember feeling, hearing, and just sensing an explosion, but there was no—just a slight acceleration of the aircraft was all that I felt in the aircraft itself. I immediately looked up from the instruments and everywhere I looked was orange.

I don't know whether the whole sky was orange, or just the reflection of an orange light in the canopy, but I had never seen anything like this before, and I am sure there was an explosion. I feel that the explodion was external to the aircraft and behind me, but I really don't know. I have never been in an aircraft in which the engine

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exploded or which has had an explosion on board, so I don't know exactly what that would feel like, but I am sure you could feel that through the controls or through the seat some way, and so I am almost positive it was external to the aircraft.

For a short time there—I don't know how long—time had no meaning at this particular time—I thought everything was all right. The right wing started to drop, which is normal in an aircraft, it wanders around a little, and I turned the wheel, brought the right wing back to level position, and either after it reached the level position or just before it reached that, the nose started dropping.

I could probably demonstrate this better with the model here. It was going along like this. The right wing dropped slightly, not very much. I used the controls. The wing came back up level and just before or after it got level, the nose started going down, and very slowly. So I applied back pressure to the control column and felt no resistance to the movement of the control column, and this kept going faster and faster. So I immediately assumed at the time that the tail section of the aircraft had come off, because it—a very violent maneuver happened in here. I think I reached a position about like this and I feel sure that both wings came off.

This was where the very violent maneuver took place.

Chairman RUSSELL. You were not where you could see the wings to determine whether they had come off?

Mr. POWERS. I didn't have much time to look, and I was being thrown around in the cockpit very much at this time. It had come down in this position. I had pulled the control column all the way back into my lap, and it did no good. As it came down, it kept going faster and it got like this and I feel that the wings came off then, but I really don't know. And a very violent maneuver during this time, and it ended up in a spin about this position. I know the nose was high, and I know it was turning very fast around, it seemed like around something heavy like in the fuselage. I don't know how much of the aircraft was left at the time. But all I could see by looking out of the cockpit was sky. The g. forces were very strong. I have no way of estimating how much.

I know that when I tried to get in the ejection position, it took both hands on my legs to pull my feet back into the stirrups of the ejection seat.

It was spinning very violently. I was thrown forward and up, and I was hanging onto the seat belt, not sitting in the seat.

My first reaction was to reach for the destruct switches, and I reached up. I don't know whether I touched them or not, but I thought that I had better see if I can get out of here before using this.

I knew that there was a 70-second time delay between the time of the actuation of the switches and the time that the explosion would occur.

So, after deciding that I had better check and see if I could get out before actuating the switches, I tried to get into position in the ejection seat so that I could use it. In this particular aircraft there isn't much clearance between the pilot's knees and the top of the windshield, the rail, steel rail across the top of the windshield, and I was being thrown forward, and if I had used the ejection seat at that time, I would have probably lost both legs just above the knees.

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I don't know how long I tried getting back in position, but at the time I could think of no other way to get out, just the ejection seat. My mind was fixed on that one idea.

I kept glancing at the altimeter as the aircraft was falling and it was going around very fast. I remembered somewhere during this time above the altitude of 34,000 feet that a friend of mine who had had an accident in an aircraft was having trouble getting out of the aircraft, and I remembered him telling me of his experience.

He said that he told himself that he just had to stop and think, and this entered my mind at the time, so I just stopped struggling and tried to think, and this was the first time that I realized that maybe I could just open the canopy, loosen the seat belt, and climb out.

And, along in here, I saw 34,000 feet on the altimeter, and it was still moving very fast.

I immediately reached up, opened the canopy. One side came loose first—I think it was the right side. The other handle loosened the left side and it floated off—I believe it was to the left. I really don't know, but it just disappeared.

I had pulled my emergency belt out, however—I think that was one of the first things I did after this real violent maneuver—so that when I separated from the aircraft, I would have an oxygen supply while descending, but I had forgotten to unfasten my oxygen hoses—the can on my left.

I opened the seat belt, and I was immediately thrown forward and halfway out of the aircraft.

I can probably demonstrate this better than I can tell. The top of the canopy was, say, the top of this table, and I was hanging out over the front of the aircraft about like this [indicating], and I think the only thing that was keeping me in the aircraft was the oxygen hose.

If that had not have been fastened, I would probably have gone out right away, I don't know.

Well, then, I tried to get back into the aircraft so that I could actuate these destructor switches. I couldn't—the g. forces were too great and I could not pull myself back over the top of the windshield.

I tried to reach around underneath the windshield. I knew where the switches were. And I couldn't get my hand back underneath.

Also, somewhere about this time my faceplate of my flying suit frosted up completely. That is when it got into the cold air, and all I could see was just the eyes on the faceplate about an inch or so in front of my face. I knew that I was well below 34,000 feet.

I had no idea of what my altitude was. I couldn't get back in the airplane. I didn't know whether I could get those oxygen hoses loose or not. I couldn't actuate the destruct switches.

So then I decided just to try to get out. I gave several lunges and something snapped and I was floating free. It was almost immediately that the parachute opened, and this surprised me because I hadn't pulled the ripcord.

The parachute was equipped with an automatic opening device, but it has to be actuated by pulling another cord, and apparently that cord got hung on something in the airplane and pulled, because it was well less than a minute, I am sure, after leaving the aircraft that the chute opened.

A short while after that—I don't remember how long—I got to thinking that this chute was set to open at 15,000 feet or lower; that

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the maximum altitude it would open would be 15,000 feet; so I knew that I could take my faceplate off, and not be in danger from the thin air.

So I removed the faceplate, just left it hanging on the hoses that were connected to the suit, and started looking around, and I was still very high—I estimate above 10,000 feet, but I have no idea of the exact altitude.

There were a lot of thoughts running through my mind at this time. It is impossible to recall them all, but I remembered I had a map in my pocket. I took this map out, looked at it, tore it into small pieces, and scattered it in the air.

I also thought of the coin with the poison pin in it. This had been given to me just prior to the flight, and it was my option whether to take this or not, and I chose to take it. I got to thinking that when I got on the ground if I were captured they would surely find this coin but maybe with just the pin lying loose in the pocket it would be overlooked, so I opened up the coin, got the pin out, and just dropped it in my pocket.

I had several other things in my pockets, but they were more or less necessary to survival if I could evade capture, so I decided not to get rid of those things. I don't remember exactly what they were. It was just some of the things that I couldn't get into my survival pack itself. I couldn't tell where I was going to land. There were a lot of wooded areas there, and there was one fairly large one that I would drift toward and then drift back away from. I was trying to guide the parachute over to this wooded area, but I had no success in that.

The winds were variable as I was coming down in the parachute, and first I would go toward the woods, later away from them.

When I got down fairly close to the ground, there was a car I could see on a dirt road. I didn't know what he was doing, but he wasn't going too fast and he seemed to be just keeping up with me, and the closer I got the closer he would get to me. He came to a little village there, turned left out to the outskirts, of the village and stopped, and I guess I was maybe 200 feet in the air at this time, and I think it was two men got out of the car.

I was descending what appeared to be very rapidly at the time, and I landed in an open field about 25 feet from a tractor with one driver on the tractor and one man standing beside the tractor.

When I hit the ground I fell down. When I looked up, one of the men, I don't know which it was, was out grabbing a-hold of the parachute to try to collapse it. I remember releasing a strap on one side so that the air would spill out of the chute. A couple of these men helped me to my feet. I don't remember whether they tried to say anything to me at the time or not. I think they did, and I just shook my head. They helped me remove my parachute harness and the helmet of the flying suit. They took away the pistol and a knife that I had on my parachute. After I got my helmet off and could look around, there was a large crowd of people there, a lot of children, so apparently there was a school in this area. I don't know how many grownups but I would say there were at least 50 people. This is just a guess.

These men tried to talk to me and I would just shake my head and indicate that I couldn't understand them. One of them pointed at me and held up two fingers, and I got the impression that he was

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asking if there were two of us, and I told him "No," just shook my head "No," and pointed to myself and held up one finger telling him that I was alone. And then he pointed up in the air and I looked up and saw what I think was a parachute, but I knew that I had no other parachute on board the aircraft.

I knew that it was no one that I knew, so I wasn't very interested at the time. They didn't pay too much attention to this. They just talked among themselves, one on each side of me caught my arm and led me to this car that I had seen earlier. They put me in the car in the front seat next to the driver and with a man on my right and there were three, I believe, in the back seat. They had loaded up the parachute, and I think my survival pack, in the trunk of the car.

They started driving through the village and I indicated to them that I would like to have something to drink, so he stopped in front of a house there in this small village. One of the men went inside, brought out a glass of water which I drank and they gave the glass to some of the people standing around and we left this village. It was on a very bad dirt road, a lot of ruts, a very rough ride. The car was small, and I estimate that it took about 30 minutes to get to this next village which was a larger place.

There was a paved street running through this second village.

They stopped on the side of the street that we approached the village from, got me out of the car, and there was what I took to be a policeman there.

They talked to him and he went through my pockets, not very thoroughly, led me across the street into some sort of an office, and I estimate that I stayed there about 2 hours. There were both civilian and military there. I don't know whether the military was there when I arrived or not but I know they were there during the time and before I left. One of the military men tried to speak to me in German, and I told him I didn't understand him. There was no one there that could speak English, so they didn't ask me any questions at the time.

People kept bringing in small pieces of wreckage from the aircraft. I saw several pieces of metal, some with English written on it, there was a small roll of film. They had my parachute there, the survival pack. Oh, they searched me here at this building also. They stripped me down to my underwear, went through my pockets, felt along the seams, but they didn't find the needle at this time.

They called in a doctor. She was a young woman, I would say about 30 years old. I had some scratches on my right leg which she painted and bandaged. They tried to talk to me several times, but I couldn't understand them and they couldn't understand me, and I estimate it was around 2 hours, maybe a little more, but I have no way of knowing how long I was there. They loaded me up in a military vehicle, a little larger than our jeep. There was an officer on my left, myself in the middle, and an enlisted man on my right in the back seat. The enlisted man had a carbine of some kind.

In the front seat there was a military driver and a civilian. They took me into a fairly large city which I assumed was Sverdlovsk. It was in the downtown area, into a fairly large office building, I would say about three stories high, and they took me to the second floor.

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There they performed a thorough search and found the needle at this place. I tried to invent a story there that I didn't know where I was, I was off course, but they brought out the packages that I had in my survival pack or on my person with maps of the Soviet Union, Russian rubles, and several other items that indicated the nature of the mission. It was then that I decided to follow the instructions that I had received earlier and tell them that I was a member of the CIA and the nature of the mission.

It was quite obvious that they knew it anyway. I think I stayed there approximately 30 minutes. They made a lot of telephone calls. There was a man there who spoke English also and asked me several questions, and that is how I found out my story wouldn't hold up.

They seemed to be in a hurry. They made several telephone calls, talked a lot among themselves, and they gave me back my underwear and the outer flying suit but kept the pressure suit. They also gave me something similar to our poncho with two slits on each side made out of canvas. The slits were for the arms to go through. They put this on me.

One man got out a pair of handcuffs. They talked among themselves and he put them back in his pocket and they never did put them on me. We went back outside.

They loaded me in a fairly large car, limousine type, drove to an airfield, and when we got there, we stopped at the gate on one side of the terminal building, I suppose it was, and we waited there maybe 5 minutes, and there was a jet passenger aircraft in front of this building. Someone opened the gate. We drove to the front entrance of this aircraft. They made me run up the steps and led me into the front compartment which contained 10 seats. There were four men with me. I remember at least one was in uniform and one was a civilian, but I don't remember what the other two were wearing.

They asked me no questions on this flight.

I am getting ahead of myself. It seemed to me that the aircraft was waiting there for us because as soon as we got in they moved the loading ramp away and started up immediately, and through the curtains to the back, when the stewardess walked through, I could see that there were other passengers in the back, so I suppose it was a regular passenger flight to Moscow.

During the flight they asked no questions. Some of the—a couple of the men played chess. They ate, offered me food but I couldn't eat, and it was during this time that I made up my mind exactly what course I would follow during the forthcoming weeks. I knew that if these people released the news that I was there—I didn't know that they would at the time, but I knew that if they did—that there would be a lot of stuff in the papers in the States, and I also knew that they probably subscribed to every paper we have, and I wanted to make my story as close to what I thought would be released in the papers as possible.

I think the flight took about 3 hours.

We arrived at the airport in Moscow. They had me sit there for about 5 minutes, brought me out, ran me down the steps to a waiting car, and we immediately left. The car had curtains inside that they kept pulled.

You could see outside through the curtains, but I don't suppose anyone could see inside.

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They took me downtown to the building that I stayed in until September 9.

There was another search performed immediately upon my arrival at this building. They took all my clothing and gave me other clothing there. There was an interrogation, I would say, within 30 minutes after my arrival there, and there were quite a few high-ranking people, many of them in uniforms, many of them in civilian clothes.

I don't remember exactly the questions they asked during this time, but I think it was mostly concerned with establishing that I was a member of the CIA, or worked for the CIA, and the purpose of the flight.

I don't know how long this lasted. I do know that Rudenko, who was the prosecutor during the trial, was more or less in charge of this interrogation session.

He offered me a Chesterfield cigarette. They asked me, I think at this time, what I knew about Moscow; what I knew about Russia; and I told them I knew very little about it.

They asked me if I would like to see Moscow, and I said "Yes." And they said, "Well, that might be arranged." Then I don't know whether I said anything or not, but, after this session was over, they took me to the prison section of this building. There I received a physical examination, not a very thorough one.

There was a lot of time spent just locked up in a room with nothing but a bench built against the wall and just waiting. The doctor came into this room and examined me there. I waited again.

They took me to a doctor's office, and it was either a different doctor or a nurse, I don't know which, gave me a shot. This was after dark; I don't know what time it was.

They immediately took me to a cell and put me in it, brought in some food which I couldn't eat, and I lay down and tried to sleep. The next morning there was an interrogation, and, for some reason or the other, this was left out of the books that they had compiled of the investigation.

I don't know why this one was left out, but it was.

Chairman RUSSELL. How do you know it was left out?

Mr. POWERS. They told me that according to the Russian law, I could review the evidence in the case before the trial.

Going through this evidence a week or so prior to the trial, I saw that one was missing, and I told this to my Soviet-appointed defense counsel, and he just shrugged his shoulders. That morning they said that in the afternoon we would take a tour of Moscow, and I was all for this because I know as long as I was riding around in a car they would not be asking questions, and I would have been willing to take a trip every day.

The real interrogation started on the morning of the 3d, and it varied, the sessions varied in length, but there were times as much as 10 to 12 hours in a single day, several times at night, but, as the time went on, they got shorter and a longer period between the interrogations.

It was somewhere in the latter part of May that I had a very bad cold, could hardly talk, that they gave me the first day off that I did not have an interrogation.

I don't remember the exact date, but it was after the 20th of May.

Through June the sessions became shorter and sometimes they would skip the whole weekend, Saturday and Sunday.

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I suppose you probably have a lot of questions on this that I have gone over. Any time you want.

Chairman RUSSELL. I do have a number.

I was interested that you said a number of times that you had no way of knowing the time. I think the first time you said your parachute was coming down. Did you not have a timepiece of some kind with you?

Mr. POWERS. No.

I had the clocks in the airplane itself. I had no wristwatch. I think there was one in my pocket, but I had forgotten about it, and it probably was not wound, anyway.

From that time I do not remember seeing a clock or anything that I could tell the time by.

Chairman RUSSELL. It is rather unusual for any American not to have a wristwatch or some kind of timepiece with him after passing 14 or 15 years of age.

I was somewhat surprised that you didn't have a wristwatch or some watch with which you could tell the time.

Mr. POWERS. Well, it is very hard to wear a wristwatch over this pressure suit. It can be done, but I usually went by the watches we had in the aircraft itself.

Chairman RUSSELL. About what time of day was it when this unexplained explosion struck your plane?

Mr. POWERS. I don't remember the exact time, but I do remember it was close to the hour, I think just before the hour, but which hour I don't know. It was in the morning. I was using Greenwich time. I have no idea what the local time was. It could be very easy to find out by going back over the flight plan and following the route because I was very close to schedule.

Chairman RUSSELL. Unfortunately the Russians have all that; haven't they?

Mr. POWERS. They have all that I had with me.

Chairman RUSSELL. If you were compelled to make an estimate of the time that elapsed after you lost control of your plane until the time that you were on the ground, what would you estimate that time to be?

Mr. POWERS. I have thought about this a lot, and I really don't know. I don't know how fast the aircraft was falling. I know it was going pretty fast, but time didn't seem to mean anything. A second could have been a minute or a minute could have been a second. It seems like . . .

Chairman RUSSELL. I am including the time that you were in your parachute coming down. Would you estimate 1 minute, 2 minutes, 3 minutes, 4 minutes?

Mr. POWERS. It was more than that. The parachute itself, I would say, was better than 10 minutes, but I really don't know. I am just guessing this.

Chairman RUSSELL. Better than 10 minutes in the parachute?

Mr. POWERS. Yes.

Chairman RUSSELL. Do you think it would have been longer or shorter than that after you lost control before the parachute opened?

Mr. POWERS. I would say much shorter.

Chairman RUSSELL. Much shorter. Now, these men that were in that automobile that were pursuing you or following you on this dirt road, were they civilians or in military uniform?

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Mr. POWERS. They all had civilian clothing.

Chairman RUSSELL. When was the first time you saw anyone in uniform?

Mr. POWERS. At the second village where these men took me.

Chairman RUSSELL. Apparently they thought you were a Russian when they first came up to you?

Mr. POWERS. Probably so. I really don't know. It didn't take them long to take my pistol away, and the knife.

Chairman RUSSELL. They had spoken to you prior to that time; hadn't they?

Mr. POWERS. Yes, but I just shook my head, didn't say a word, so I don't know what they thought.

Chairman RUSSELL. Did you ever have a jetplane flame out on you, Mr. Powers, while you were piloting?

Mr. POWERS. Yes, I have.

Chairman RUSSELL. Does it make any unusual noise or give any unusual impetus to the plane?

Mr. POWERS. Different aircraft react differently. In this particular airplane I had had flameouts before. Sometimes there is a chugging of the engine, but you know what that is. There was no kind of an explosion accompayning that, and nothing that would give an orange light.

Chairman RUSSELL. The orange light was something that was really unusual?

Mr. POWERS. Yes, and it was apparently persistent. It wasn't a flash, but all the time that I was looking out it was there, but I don't remember ever seeing it again.

Chairman RUSSELL. Has there ever been any other occasion when you were in an airplane and were the target of a ground-to-air missile or explosive or shell of any kind?

Mr. POWERS. Not that I know of.

Chairman RUSSELL. You have never seen any ground-to-air missile explode?

Mr. POWERS. No, I haven't.

Chairman RUSSELL. Is that right?

Mr. POWERS. I have seen photographs or moving pictures of some of our missiles shooting an aircraft down, but the ones I have seen, the missile hits the aircraft.

Well, I am sure that nothing hit this aircraft. If something did hit it, I am sure I would have felt it.

Chairman RUSSELL. You did say that the plane had an impetus forward when it was hit?

Mr. POWERS. Yes, sir.

Chairman RUSSELL. When this explosion occurred evidently it occurred behind the plane?

Mr. POWERS. That was my thinking. There was definitely a slight acceleration—not much, but a push.

Chairman RUSSELL. Could you see the plane to which you referred or did you only see the markings of the jet plane in the atmosphere?

Mr. POWERS. This was at least an hour earlier, and I only saw the condensation trails themselves. I tried to see the aircraft and couldn't. They were quite a way below and I estimated 20 miles to the right, but it is hard to estimate distances in the air.

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Chairman RUSSELL. That is not much range for a jet airplane though, is it, 20 miles? The main difference was the ——

Mr. POWERS. The altitude.

Chairman RUSSELL. The altitude, not the distance from it?

Mr. POWERS. Yes.

Chairman RUSSELL. Did you see any other airplanes on that mission?

Mr. POWERS. I saw no other condensation trails or airplanes.

Chairman RUSSELL. Have you ever had reason to believe that airplanes on any other mission were undertaking to reach you or to find you?

Mr. POWERS. Pardon?

Chairman RUSSELL. Have you ever had any occasion to believe on this or any mission that an airplane was attempting to attack the plane which you were piloting?

Mr. POWERS. No. On this mission I can't be sure that these two planes that I did see or the condensation trails that I did see, I can't be sure that they were looking for me, but it seemed odd that they would first parallel my course exactly in the opposite direction and then a few minutes later parallel my course in the same direction I was heading. I assume that they were looking for me but they made no turns to try to intercept or anything.

Chairman RUSSELL. You said several times that you drifted to the right of course?

Mr. POWERS. Yes.

Chairman RUSSELL. To the right of course. Not being a pilot, why is that—what is that of course, is that the prevailing wind pushing to the right?

Mr. POWERS. We usually have a forecast wind for different altitudes, and the flight plan is drawn up to take into consideration the strength of the wind, and apparently the wind information we had was a little wrong and the wind was stronger than the navigator thought it would be, and he had computed the course for a slower wind.

Chairman RUSSELL. You are not a navigator yourself, Mr. Powers?

Mr. POWERS. Yes, a pilot has to be a navigator, but I am not a rated navigator. I never was a rated navigator in the Air Force.

Chairman RUSSELL. Had you ever made a parachute descent before?

Mr. POWERS. No, sir.

Chairman RUSSELL. You say they didn't find this needle until about the third time they examined you, I believe. Where was the needle hidden?

Mr. POWERS. I had just dropped it loose in the pocket.

Chairman RUSSELL. Loose in your pocket?

Mr. POWERS. Yes.

Chairman RUSSELL. I wish you would clear up the matter of the needle, Mr. Powers.

Were you under any obligation to destroy yourself if you were captured?

Mr. POWERS. Oh, no. I don't remember exactly who gave me the needle that morning, but they told me, "You can take it if you want to." They said, "If something does happen you may be tortured.

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Maybe you could conceal this on your person in some way, and if you see that you cannot withstand the torture, you might want to use it."

And that is the reason I took the needle. But I could have left it. I wasn't told to take it.

Chairman RUSSELL. Do you have the instructions that you received that morning and that you usually received there before you——

Mr. POWERS. Do I have them?

Chairman RUSSELL. Yes, sir; the instructions as to your course of conduct in the event you fell into the hands of any enemy, potential enemy.

Mr. POWERS. Well, it is hard to remember this long exactly what they were.

Chairman RUSSELL. I think they are there. You can read them. I think they ought to go into this record.

Mr. POWERS. Listed here are three paragraphs:

(*a*) If evasion is not feasible and capture appears imminent, pilots should surrender without resistance and adopt a cooperative attitude toward their captors.

(*b*) At all times while in the custody of their captors, pilots will conduct themselves with dignity and maintain a respectful attitude toward their superiors.

(*c*) Pilots will be instructed that they are perfectly free to tell the full truth about their mission with the exception of certain specifications of the aircraft. They will be advised to represent themselves as civilians, to admit previous Air Force affiliation, to admit current CIA employment, and to make no attempt to deny the nature of their mission.

That is all.

Chairman RUSSELL. Those instructions had been given you before you took off on this flight?

Mr. POWERS. Yes.

Chairman RUSSELL. You were thoroughly familiar with them?

Mr. POWERS. Yes.

Chairman RUSSELL. They were a part of your agreement with the CIA?

Mr. POWERS. Yes.

Chairman RUSSELL. Mr. Powers, were you close enough to this other parachute to tell whether it was occupied by a man or whether it just had some object in it?

Mr. POWERS. No. It was very high. I don't know how high. I couldn't see what it was.

I thought at the time that—well, where were a lot of thoughts running through my mind, and I thought at the time that maybe this explosion was caused by a rocket, and, if so, maybe this parachute was used to recover, say, the first stage or something.

Actually, I have no idea what was in the parachute, but I am sure it was a parachute, very similar to mine. It was a different color. I think it had red and white markings.

Chairman RUSSELL. Were these people concerned about it? Was there any possibility that this was a Russian in that parachute and that they had shot down one of their own planes in their efforts to reach you at your high altitude?

Mr. POWERS. I really don't know.

The people just asked me if there were two of us, two Americans. I mean he just pointed at myself and asked if there were two, and I told him by sign language that there was only one, and we got in the car and left.

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They didn't seem concerned at all.

Chairman RUSSELL. So they didn't even look for the other man?

Mr. POWERS. No, the ones who were with me did not.

Chairman RUSSELL. You do not know whether anyone else out there looked for him or not?

Mr. POWERS. No; I have no idea.

Chairman RUSSELL. They did not ever bring him in to where they took you?

Mr. POWERS. No.

I do know that this was not part of my aircraft or equipment.

Chairman RUSSELL. I was very much interested in that one day's interrogation that was left out of your evidence and how you knew it was left out.

You cannot read Russian, can you, Mr. Powers?

Mr. POWERS. No.

They translated the interrogations into English for me to read and to correct.

Chairman RUSSELL. And there was no evidence of that day at all in this record?

Mr. POWERS. There was definitely an interrogation on that morning, and it was definitely not in the books they gave me to review.

Chairman RUSSELL. That is what I mean: There was nothing in the book that transpired that day?

Mr. POWERS. Right.

Chairman RUSSELL. Did they threaten you at any time when they were examining you?

Mr. POWERS. There were no definite threats, but they didn't let me forget that this crime was punishable by death. Anytime they would mention that it was 7 to 15 years and death, and they wouldn't let me forget that.

Chairman RUSSELL. Did you ever manifest any reluctance in answering the questions that they asked you or did you answer them immediately?

Mr. POWERS. I refused to answer several of their questions. I showed reluctance on many.

Chairman RUSSELL. Pardon?

Mr. POWERS. I showed reluctance on many, some that I couldn't see how they could be of any interest to them at all, but I was just reluctant in answering all questions.

Chairman RUSSELL. That was not exactly in conformity with your instructions there to cooperate with your captors; was it?

Mr. POWERS. Well, you shouldn't go overboard with this cooperation, I don't think.

Chairman RUSSELL. You were quoted in the press as having stated at your trial that you had made a terrible mistake in flying over Russia and apologized to the Russian people and would never do it again. Was that a misquotation or did you make that statement at your trial?

Mr. POWERS. No, that wasn't a misquotation. I made this statement on the advice of my defense counsel, and also because it was easy to say I was sorry because what I meant by saying that and what I wanted them to think I meant was quite different. My main sorrow was that the mission failed, and I was sorry that I was there, and it was causing a lot of adverse publicity to the States. But, of course, some of these things I couldn't say in that statement.

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Chairman RUSSELL. Was the room in which you were confined a cell, a jail cell, or was it just an ordinary office room?

Mr. POWERS. No, it was part of a prison. It had a solid door with a peephole in it, one window with opaque glass, and bars on the outside of the glass itself. The only way I could see out was through a small crack at the top, and I could see part of the wall of the wing of the building opposite this cell, but it was definitely a prison.

Chairman RUSSELL. Was it kept reasonably clean?

Mr. POWERS. Yes, it was kept clean.

Chairman RUSSELL. How was your food that you had there at the prison?

Mr. POWERS. The food was better at the first place in Moscow there than it was at Vladimir at the prison there. I couldn't eat for a long time, and apparently they got quite worried about it and kept asking me if they could get me any special foods or anything, and I told them "No."

Later on I did start eating, but I never had much of an appetite the whole time I was there. There seemed to be plenty of the food but it is quite different from what we have here. It consisted predominantly of potatoes and cabbage.

Chairman RUSSELL. Borsch and different kinds of soups?

Mr. POWERS. Yes, at the prison in Vladimir the best part of the meal at lunch was a bowl of soup.

Chairman RUSSELL. Did you ever have a roommate or did you occupy that cell by yourself?

Mr. POWERS. From May 1 to September 9 I was in solitary confinement. When I moved to the other prison I had a roommate.

Chairman RUSSELL. What had he been charged with?

Mr. POWERS. He was—they called it an article 58, which I think means crimes against the state, and he said treason. He spoke English. He spoke four languages. He was a Latvian. He spoke Latvian, German, English, and Russian.

Chairman RUSSELL. Do you have any reason to believe he was planted there to spy on you or do you think he was a bona fide prisoner?

Mr. POWERS. This was always in the back of my mind, but I do not think he was a plant. He had a lot of stuff that he had accumulated over the few years that he had been there, notes that he had taken while he was studying Russian written on scraps of newspaper and a lot of other things. It took him a long time to accumulate what he had. I feel sure that he wasn't a plant.

Chairman RUSSELL. How long had he been in prison?

Mr. POWERS. He was there, I think, in April of this year will be 7 years. This is what he told me. His sentence was 15 years.

Chairman RUSSELL. Did they not periodically examine your possessions? You say he had accumulated this file of material about Russian. They didn't go through your belongings to see whether you had anything you shouldn't have?

Mr. POWERS. Not while we were there, anyway. Not while we were in the cell.

Chairman RUSSELL. Not in any instance?

Mr. POWERS. There were several inspection teams who came around the prison. They would just come in and ask through an interpreter if there were any questions, any complaints, stuff like this, but they didn't bother us very much at all.

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Chairman RUSSELL. I can't refrain from saying that the Russians were much more gentle with you than I would ever have expected they would have been to one who was taken under those circumstances.

Mr. POWERS. It surprised me, also. I expected much worse treatment than I received.

Chairman RUSSELL. I rather think you got off somewhat better than a Russian spy would in this country under the same circumstances.

Mr. POWERS. I really don't know.

Chairman RUSSELL. It might depend on where he happened to land. Undoubtedly he would have a rough time in the section of the country from which I come.

Senator Saltonstall?

Senator SALTONSTALL. Mr. Chairman—Mr. Powers, I think I only have one or two questions. I have listened with interest to what you have said. I have listened to what Mr. McCone has told us, what he has given out in unclassified information, and I have listened to the chairman.

My question would be this: Did I understand you correctly that when you were coming down in the parachute you threw away your instructions and threw away the map?

Mr. POWERS. No, I had no written instructions with me, but I did have a map, and I tore that up in very small pieces and scattered it out in the air as I was coming down.

Senator SALTONSTALL. So that your instructions were in your head, so to speak?

Mr. POWERS. Yes.

Senator SALTONSTALL. Now, did you have a briefcase or something else in which these other things, your special food, and these other things, were that they looked through afterward?

Mr. POWERS. Yes. I had what we call a seat pack. In this seat pack was a collapsible rubber liferaft, some food, some water, matches, several other items necessary to, say, live off the land or survival in an unpopulated area.

Senator SALTONSTALL. In other words, nothing except survival kit?

Mr. POWERS. Yes. There were also some cloth maps for escape and evasion.

Senator SALTONSTALL. Mr. Powers, I will just say this: After listening to Mr. McCone and after listening to you, I commend you as a courageous, fine young American citizen who lived up to your instructions and who did the best you could under very difficult circumstances.

Mr. POWERS. Thank you very much.

Chairman RUSSELL. Senator Byrd?

Senator BYRD of Virginia. The chairman has very ably covered the ground, and I will not ask any questions.

I do want to say I join with Senator Saltonstall in expressing my opinion that the witness, Mr. Powers, has made an excellent presentation. He has been frank, and I am also very much gratified that Mr. McCone has testified before the committee that so far as he knows no action has been taken by you which was contrary to your instructions or contrary to the interests of this country.

Chairman RUSSELL. Senator Smith.

Senator SMITH of Maine. Mr. Chairman, my questions have been covered, thank you.

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Chairman RUSSELL. Senator Stennis.

Senator STENNIS. Mr. Chairman, I think you have covered this matter fully. I want to ask one question.

Mr. Powers, I understand you had an attorney appointed for your trail.

Mr. POWERS. Yes, that is right.

Senator STENNIS. Did he work with you and freely advise you and counsel with you, give you advice?

Mr. POWERS. Yes. We had several meetings before the trial. But I didn't get to see him until, I would say, about 2 weeks before the trial.

Senator STENNIS. He rendered you a valuable service, did he?

Mr. POWERS. Well, I really don't know. I never did trust him any more than the rest of them.

Senator STENNIS. I mean by that that he gave you information and talked to you and you think you were better off at the trial than you would have been without his aid. What about that?

Mr. POWERS. I really don't know.

Senator STENNIS. You have understood, I suppose, that at the time this occurred there was some publicity here, not a great deal, but some that was not altogether favorable to you.

Did you know about that?

Mr. POWERS. I have heard about this since I——

Senator STENNIS. That is just a prelude for my saying this—that it is with satisfaction to me that I learn that you have been fully exonerated by the men who most know how to judge what you did, what the facts were, by your superiors and those who employed you. Not only that, but they found that you have discharged all of your obligations to your country, and it is with satisfaction to us here and I think to the American people to learn that, to know it is true.

I know it makes you feel mighty good.

Me. POWERS. There was one thing that I always remembered while I was there and that was that I am an American.

Senator STENNIS. You are an American.

Mr. POWERS. Right.

Senator STENNIS. And proud of it?

Mr. POWERS. Right.

Senator STENNIS. That is fine. [Applause.] You felt that the American flag would finally find you and follow through and do what was good for you?

Mr. POWERS. Yes, I did.

Senator STENNIS. That is all, Mr. Chairman.

Chairman RUSSELL. Senator Case.

Senator CASE of South Dakota. Thank you, Mr. Chairman.

Mr. Powers, did you have any opportunity to see the plane or any part of it on the ground after you landed?

Mr. POWERS. Yes, I did. They took me out somewhere around the middle of May to a building in a park in Moscow. The plane was on display there.

Senator CASE of South Dakota. Was there any evidence visible or evident to you that the plane had been tampered with or changed in any way after it had been brought there?

Mr. POWERS. Well, there was quite a bit of damage. Some parts were missing completely. There were a few things that I was very

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interested in looking at myself. I was particularly interested in the tail section, because I though it might be possible that the tail of the aircraft came off and this caused the accident, but on looking at that there were no scorch marks. The paint was still intact. So I could only assume that while the engine was running the tail was on the aircraft. But as far as anything else, there was no way that I could tell whether it had been tampered with or not. There was a lot of damage to everything I saw.

Senator CASE of South Dakota. Was the tail on the plane when you saw it?

Mr. POWERS. No. It was sitting in one place by itself.

Senator CASE of South Dakota. You have referred to the incident as an explosion. Was there anything visibly noticeable about the plane that helped to form that opinion that it was an explosion, or was that simply the fact that at the time you felt the incident you were impelled forward?

Mr. POWERS. Well, I heard and felt something, and it sounded like a very dull explosion, like something "whoomp," not a real sharp sound, but dull. Then the light after this. Looking at the aircraft I noticed on one of the wings that there were holes on one side of the wings, but I don't know whether this was caused by a fragmentation or maybe when it hit the ground.

Senator CASE of South Dakota. How long were you in the Air Force?

Mr. POWERS. A little more than 5 years.

Senator CASE of South Dakota. During that time did you receive any indoctrination, so to speak, with regard to communism?

Mr. POWERS. This was really a long time ago. I have seen some films while I was in the Air Force. I think I had attended a lecture where a list of Communist organizations was pointed out. There might have been others, but I can't remember.

Senator CASE of South Dakota. Was your service in the Air Force during wartime?

Mr. POWERS. No. Well, I entered the Air Force during the Korean war, but never did get to Korea.

Senator CASE of South Dakota. With respect to this particular flight, did you have anything to do with the selection of the date for the flight?

Mr. POWERS. No.

Senator CASE of South Dakota. Do you know whether or not the timing of the flight was primarily a matter of the selection of weather and favorable atmospheric conditions or anything else?

Mr. POWERS. I would assume that it depended primarily on weather. I really don't know.

Senator CASE of South Dakota. You really don't know, but that was your assumption?

Mr. POWERS. Yes.

Senator CASE of South Dakota. There was nothing in your experience that would indicate anything other than that it was a timely flight because of the weather conditions?

Mr. POWERS. That is what I would think, yes.

Senator CASE of South Dakota. Did you learn from your cellmate anything about the economic or political conditions in Russia?

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Mr. POWERS. We discussed quite a few things there. He seemed to be more interested in the West than I was in Russia. and we primarily talked about that.

Senator CASE of South Dakota. What was his original nationality?

Mr. POWERS. Latvian.

Senator CASE of South Dakota. Latvian.

Are you still in the employ of the Central Intelligence Agency?

Mr. POWERS. Yes, I am.

Senator CASE of South Dakota. That is all, Mr. Chairman.

Chairman RUSSELL. What was your rank when you separated yourself from the Air Force, Mr. Powers?

Mr. POWERS. First lieutenant.

Chairman RUSSELL. Senator Symington.

Senator SYMINGTON. Mr. Powers, what do you think hit you, or nearly hit you?

Mr. POWERS. I really don't know. I just know that there was an explosion, but how it got there—I feel sure that it was external to the aircraft, but how it got there or what it was, I have no idea.

Senator SYMINGTON. Has anybody given you an opinion as to what that orange glow was?

Mr. POWERS. Well, they stressed many, many times that they got me on the very first shot of a rocket, but they stressed it so much that I tend to disbelieve it.

Senator SYMINGTON. Is there any possibility that you were hit twice, once at a higher altitude, say, a near miss, and again at a lower altitude?

Mr. POWERS. No.

There was only one explosion that I know of, and they would have had to have been excellent shots to hit that thing as it fell.

Senator SYMINGTON. In the Red Star it said that—

> Major Varanoff ran out and saw in the rays of the day's sun fragments of the foreign plane falling down and not far from it the pilot himself.

That could not be true if you were hit at anything like 67,000 or 68,000 feet; could it? You would be behind the pieces of the plane; would you not?

Mr. POWERS. Well, while I was descending in the parachute, I saw one piece of the plane fall. It was a flat piece. It may have been a wing or it may have been something smaller. But it was falling like a leaf falls, flipping and turning, and fairly slow, but it passed me.

I have no idea of how far away it was.

Senator SYMINGTON. Could it have been another plane that had been hit?

Mr. POWERS. No, I assumed at the time that it was part of my aircraft. If it was a wing, it was a long distance off. If it was a smaller piece, it was closer. That is all I can say about it.

Senator SYMINGTON. You did your best to destroy the plane, but, because of the g.'s on you at the time, you were just unable to reach the controls; is that correct?

Mr. POWERS. Yes, that is right.

Senator SYMINGTON. Mr. Chairman, I would like to join you and other members of the committee in commending Mr. Powers for the way he handled himself in this unfortunate episode. I have no further questions.

Chairman RUSSELL. Senator Bush.

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Senator BUSH. Mr. Chairman, I have no questions, but I also would like to say, having heard Mr. McCone's report today and having listened to Mr. Powers' remarkable story, that I am satisfied he has conducted himself in exemplary fashion and in accordance with the highest traditions of service to one's country, and I congratulate him upon his conduct in captivity and his safe return to the United States.

Mr. POWERS. Thank you.

Chairman RUSSELL. I think I should say to the members of the committee that Mr. Powers has not yet completed his entire statement.

He stopped for a period of questions, as I understood, and then you will tell us more about your trial before you conclude, will you not, Mr. Powers?

Mr. POWERS. Yes, I will go right on until I got back, if you want to listen to it.

Chairman RUSSELL. Senator Jackson.

Senator JACKSON. Did they indicate to you whether the plane, your plane, came down near where you landed?

Mr. POWERS. No.

At one time during the investigation they showed me some kind of a map that had indicated on it where different parts of the aircraft fell, but I didn't recognize any of the landmarks that I could see on this map.

Senator JACKSON. And while you were in this particular village and later in Sverdlovsk, did they indicate at that time that they had located the plane?

Mr. POWERS. Well, people kept bringing in small pieces, pieces that could be carried, but, as far as indicating to me that they had located the main parts of it, no.

Senator JACKSON. Did they indicate later that Mr. Khrushchev had personally ordered the shooting down of your aircraft by a rocket?

Mr. POWERS. I don't think so. I don't remember that his name entered into it.

Senator JACKSON. I asked that because the story was carried, I believe, in the American press, based on, of course, a story out of Moscow from one of the official Soviet news agencies.

But they did not indicate that to you?

Mr. POWERS. No, sir.

Senator JACKSON. Do I understand after the trial you were removed to Adema? That is out about 100 miles; is it not?

Mr. POWERS. I would say about 100 or 150 miles.

Senator JACKSON. East of Moscow?

Mr. POWERS. Yes.

Senator JACKSON. Did they attempt, while you were there, to indoctrinate you at all into communism?

Mr. POWERS. No.

Senator JACKSON. Did they attempt to indoctrinate you into the Soviet system?

Mr. POWERS. No.

There were no lectures, no political sessions that I had to attend, but the only news source I had was communistic. There was a loudspeaker in the cell that was tuned to one of the Moscow radio stations.

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I didn't understand very much of what went on, on this. But there was no direct attempt for someone to come in and talk to me about any of this.

Senator JACKSON. Did they indicate that you might be let out earlier than your sentence provided for?

Mr. POWERS. No.

Sometime—I think right after the trial—someone mentioned that there might be such things as exchanges, and I said, "Is that right?"

And he said, "Yes, but we don't have any Soviet spies in the United States."

But that is the only indication I had.

Senator JACKSON. When did you first get an idea that they had changed their mind about that?

Mr. POWERS. The first I knew about it was about 7:30 at night on the 7th of February.

Senator JACKSON. This year?

Mr. POWERS. This year, yes.

I didn't know what was going on, but I knew that something was going on. Some men came in with an interpreter and asked me if I would like to accompany them to Moscow tomorrow, and added, "Without any guards," so I immediately assumed something was going on. I didn't know what.

We got to Moscow, spent the night there, and they told me that night that we would go to Berlin the next morning. I still didn't know what was happening.

Senator JACKSON. At least you were moving west, though?

Mr. POWERS. Yes, and I was very glad to take this trip. Actually, they never did tell me that Colonel Abel was involved in this.

I am sure they knew that I would find out the minute I stepped across the line, but, up until that time, it was just the goodness of their hearts and not anything else.

Senator JACKSON. Just a voluntary act on their part?

Mr. POWERS. Yes.

Senator JACKSON. They did not indicate that anyone else was being exchanged?

Mr. POWERS. No.

Senator JACKSON. Mr. Chairman, I want to conclude by saying that I associate myself with the remarks previously made here. I think it is quite clear from what we have heard this morning and now that Mr. Powers has lived up to his contract.

Chairman RUSSELL. Senator Beall.

Senator BEALL. Mr. Chairman, I have no questions. I do want to associate myself with you and the balance of the committee in commending Mr. Powers for the very intelligent way he has handled himself.

I was at the hearings this morning, and I am convinced that he has been very frank with us and I congratulate him.

Chairman RUSSELL. Senator Thurmond.

Senator THURMOND. No questions, Mr. Chairman.

Chairman RUSSELL. Senator Goldwater.

Senator GOLDWATER. I have no questions.

Chairman RUSSELL. Mr. Powers, you might give us a brief résumé of your trial now. Senator Jackson has already covered the exchange, but you might give us a brief résumé of the trial.

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Mr. POWERS. I don't remember the exact date that they told me when the trial would take place, but when they did tell me I was very curious to know why the first day of the trial fell on my birthday, and I asked them about this. They said that it was just a coincidence. Somewhere around the 1st of August, I met the Soviet-appointed defense counsel for the first time. I had three or four sessions with him, not very long ones.

He made a lot of suggestions of things I should do. Actually it didn't seem that he did too much work or didn't seem to be extremely interested in the case, or this was my impression.

I guess most everyone here knows about the trial.

I think that has been fairly highly publicized. It was a very tense time for me.

The only good part about the whole thing was the last day, when I was allowed to see my relatives for the first time.

Chairman RUSSELL. Do you feel that you were treated harshly by the Russians, Mr. Powers?

Mr. POWERS. No, I was treated much better than I expected to be treated.

Chairman RUSSELL. How about the sentence that was imposed on you at the conclusion, after you pled guilty?

Mr. POWERS. I expected much worse.

Chairman RUSSELL. You expected a more severe sentence than you received?

Mr. POWERS. Up until the time of the prosecutor's speech where he only asked for 15 years, I expected death, but after he had asked for that I thought it would be 15 years or just a little under, maybe 12 to 15 years.

Chairman RUSSELL. I believe they don't have a jury in Russia.

Mr. POWERS. No. It was three judges and that is it.

Chairman RUSSELL. They have three judges who sat on the case?

Mr. POWERS. Yes.

Chairman RUSSELL. Did your lawyer make any argument to the judges?

Mr. POWERS. I don't think he argued with anyone. He asked a few questions, but I brought up family background.

Chairman RUSSELL. Did the prosecutor make any argument to the judges?

Mr. POWERS. It seemed to be that his case was against the United States and not against me. That is the impression I got there. He had a long speech at the end, but I don't recall what all he said.

Chairman RUSSELL. He denounced the imperialists and things of that kind more than he did you?

Mr. POWERS. Yes.

Chairman RUSSELL. You were rather fortunate in being put in the place of an unwitting pawn of these imperialists rather than being responsible for all of it yourself?

Mr. POWERS. Well, that might have helped; I don't know.

Chairman RUSSELL. After your conviction, was there any difference in the treatment that you received prior to your trial?

Mr. POWERS. Not until I changed prisons, and then the food was worse. The bed was much better, though.

Chairman RUSSELL. That was in Moscow?

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Mr. POWERS. In Moscow this bed wasn't fit to sleep on. It was iron straps welded together with a very thin mattress on it, and it was almost impossible to sleep on it.

Chairman RUSSELL. I hope I never visit Russia under the circumstances you did, Mr. Powers. At the time I was there I found Moscow to be exactly different. I got a good bed and very poor food, and out in the country the bed was terrible but the food was edible, so my experience was exactly the reverse of yours. I don't think I would try to visit your way, though.

Any further questions by any member of the committee?

If not, I will ask all the policemen to please see that Mr. Powers and his CIA escort are able to get out before the rush.

Will all of you please keep your seats.

(Whereupon, at 3:30 p.m., the committee recessed, subject to the call of the Chair.)

(The following is an unclassified summary of the results of the interrogation by the Central Intelligence Agency of Francis Gary Powers since his release by the Soviet Union:)

STATEMENT CONCERNING FRANCIS GARY POWERS

Since his return from imprisonment by Soviet Russia, Francis Gary Powers has undergone a most intensive debriefing by CIA and other intelligence specialists, aeronautical technicians, and other experts concerned with various aspects of his mission and subsequent capture by the Soviets. This was followed by a complete review by a board of inquiry presided over by Judge E. Barrett Prettyman to determine if Powers complied with the terms of his employment and his obligations as an American. The board has submitted its report to the Director of Central Intelligence.

Certain basic points should be kept in mind in connection with this case. The pilots involved in the U–2 program were selected on the basis of aviation proficiency, physical stamina, emotional stability, and, of course, personal security. They were not selected or trained as espionage agents, and the whole nature of the mission was far removed from the traditional espionage scene. Their job was to fly the plane, and it was so demanding an assignment that on completion of a mission physical fatigue was a hazard on landing.

The pilots' contracts provided that they perform such services as might be required and follow such instructions and briefings in connection therewith as were given to them by their superiors. The guidance was as follows:

"(*a*) If evasion is not feasible and capture appears imminent, pilots should surrender without resistance and adopt a cooperative attitude toward their captors.

"(*b*) At all times while in the custody of their captors, pilots will conduct themselves with dignity and maintain a respectful attitude toward their superiors.

"(*c*) Pilots will be instructed that they are perfectly free to tell the full truth about their mission with the exception of certain specifications of the aircraft. They will be advised to represent themselves as civilians, to admit previous Air Force affiliation, to admit current CIA employment, and to make no attempt to deny the nature of their mission."

They were instructed, therefore, to be cooperative with their captors within limitations, to use their own judgment of what they should attempt to withhold, and not to subject themselves to strenuous hostile interrogation. It has been established that Mr. Powers had been briefed in accordance with this policy and so understood his guidance. In regard to the poison needle which was prominently mentioned at the trial in Moscow, it should be emphasized that this was intended for use primarily if the pilot were subjected to torture or other circumstances which in his discretion warranted the taking of his own life. There were no instructions that he should commit suicide and no expectation that he would do so except in those situations just described, and I emphasize that even taking the needle with him in the plane was not mandatory; it was his option.

Mr. Powers' performance on prior missions has been reviewed, and it is clear that he was one of the outstanding pilots in the whole U–2 program. He was proficient both as a flyer and as a navigator and showed himself calm in emergency situations. His security background has been exhaustively reviewed, and any circumstances which might conceivably have led to pressure from or defection to

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the Russians have also been exhaustively reviewed, and no evidence has been found to support any theory that failure of his flight might be laid to Soviet espionage activities. The same is true of the possibilities of sabotage.

Accordingly, Mr. Powers was assigned to the mission that eventually occurred on May 1, 1960, and accepted the assignment willingly. It was a particularly grueling assignment across the heart of Soviet Russia and ending on the northwest coast of Norway. It was necessary to maintain extreme altitude at heights at which no other plane but the U–2 had steadily flown. So far as can be ascertained Mr. Powers followed the scheduled flight plan, making a prescribed turn to the northwest when nearing the city of Sverdlovsk where he was directly on course. According to his statement, he had settled on his new course and had Sverdlovsk in sight, perhaps 20 or 30 miles away, when he felt and heard something he describes as a push or feeling of acceleration on the plane accompanied by a dull noise unlike the sharp sound of a high explosive. This caused him to look up from his instruments, and he saw surrounding him, or perhaps reflected in his canopy, he is not sure, an orange or reddish glare which seemed to persist. He felt this phenomenon to be external to the plane but says he cannot be sure. For a moment the plane continued to fly normally, then it dipped to the right but he found he was able to control this dip and level the plane with his normal controls. Shortly thereafter, however, the plane began to nose forward, and Mr. Powers states that as he drew back on the stick he felt no control as if the control lines had been severed. The plane nosed sharply over and went into violent maneuver, at which point he believes the wings came off. The hull of the plane then turned completely over and he found himself in an inverted spin with the nose high revolving around the center of the fuselage so that all he could see through the canopy looking ahead was the sky revolving around the nose of the plane. This motion exerted g. forces on him which threw him forward and up in the cockpit. At this point he states he could have reached the destruct switches which would have set off an explosive charge in the bottom of the plane. However, he realized that this charge would go off in 70 seconds and he did not yet know if he could leave the plane. He stated that he tried to draw himself back into the seat to see if he could activate the ejection mechanism, but the g. forces prevented him from recovering his position. Being forward and out of the seat, even if he could have used the ejection mechanism, which was below and behind him, it would have seriously injured him if activated. He recalled that it was possible to open the canopy manually, and shortly thereafter he was able to do so and the canopy disappeared. His last recollection of the altimeter was that he was at about 34,000 feet and descending rapidly. To see if he could get out of the cockpit, he released his seat belt and was immediately thrown forward out over the cowling of the cockpit to a position where he was held only by his oxygen tube. He tried to pull himself back in the cockpit to the destruct switches which take four separate manipulations to set and found himself unable to do so because of the g. forces, the inflation of his pressure suit, and the fogging up of his face mask which totally obscured his view. By pushing he tore loose the oxygen tube and fell free, whereupon his parachute opened almost immediately, indicating that he was probably at 15,000 feet or below at this time since the automatic mechanism was set for this height. In connection with Powers' efforts to operate the destruct switches, it should be noted that the basic weight limitations kept the explosive charge to 2½ pounds and the purpose of the destruct mechanism was to render inoperable the precision camera and other equipment, not to destroy them and the film. After he landed he was taken by commercial plane to Moscow the same day.

In the processing into the prison he was given a hypodermic injection which may well have been a general immunization, and there is no evidence of the use of truth serums or other drugs. From then until the time of the trial, about 100 days, he was kept in solitary confinement and subjected to constant interrogation, sometimes as long as 10 or 12 hours a day, but on the average considerably less than this. He had no access to anyone but his Russian guards and interrogators despite repeated requests for contact with the U.S. Embassy or his family and friends. He states that the interrogation was not intense in the sense of physical violence or severe hostile methods, and that in some respects he was able to resist answering specific questions. As an example, his interrogators were interested in the names of people participating in the project, and he states that he tried to, anticipate what names would become known and gave those, such as the names of his commanding officer and certain other personnel at his home base in Adana, Turkey, who would probably be known in any case to the Russians. However, they asked him for names of other pilots and he states that he refused to give these on the grounds that they were his friends and comrades and if he gave their names they would lose their jobs and, therefore, he could not do so. He states

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they accepted this position. It is his stated belief, therefore, that the information he gave was that which in all probability would be known in any case to his captors.

At his trial he had only the advice of his Russian defense counsel to go by, and he advised that unless Powers pleaded guilty to what the Russians considered a clear violation of domestic law and expressed penitence, matters would go hard for him, including a possible death sentence. These actions were consistent with his instructions from CIA. After the trial and sentencing, Mr. Powers states that there was only intermittent interrogation of little importance and that on the whole he was well treated, adequately fed, and given medical attention when required.

All the facts concerning Mr. Powers' mission, the descent of his plane, his capture, and his subsequent actions have been subjected to intensive study. In the first place, Powers was interrogated for many days consecutively by a debriefing team of experienced interrogators, one of whose duties was to evaluate Powers' credibility. They expressed the unanimous view that Powers was truthful in his account. Secondly, an intensive inquiry was made by Government officials into the background, life history, education, conduct, and character of Powers. This team included doctors, specialists in psychiatry and psychology, personnel officers, his former colleagues in the Air Force and on the U–2 project. All these persons were of the view that Powers is inherently and by practice a truthful man. Thirdly, Powers appeared before a board of inquiry and testified at length, both directly and under cross-examination. The board agreed that in his appearance he appeared to be truthful, frank, straightforward, and without any indicated attempt to evade questions or color what he was saying. In the board's judgment he reflected an attitude of complete candor. In the fourth place, when during his examination before the board a question was raised as to the accuracy of one of his statements, he volunteered with some vehemence that, although he disliked the process of the polygraph, he would like to undergo a polygraph test. That test was subsequently duly administered by an expert and in it he was examined on all of the factual phases which the board considered critical in this inquiry. The report by the polygraph operator is that he displayed no indications of deviation from the truth in the course of that examination. In the fifth place, a study of the photograph of the debris of the plane and other information concerning the plane revealed in the opinion of experts making the study no condition which suggested an inconsistency with Powers' account of what had transpired. The board noted the testimony of Russian witnesses at the trial in Moscow which dealt with the descent and capture of Powers and with technical features of the plane and the incident.

The testimony was consistent with the account given by Powers. Powers was able to identify a spot near a small village where he thought he had landed. This location checked with prior testimony given by Powers as to physical features, directions, and distances and also corresponded with earlier independent information not known to Powers that certain of the persons who captured him lived in this same small village. Some information from confidential sources was available. Some of it corroborated Powers and some of it was inconsistent in parts with Powers' story, but that which was inconsistent was in part contradictory with itself and subject to various interpretations. Some of this information was the basis for considerable speculation shortly after the May 1 episode and subsequent stories in the press that Powers' plane had descended gradually from its extreme altitude and had been shot down by a Russian fighter at medium altitude. On careful analysis, it appears that the information on which these stories were based was erroneous or was susceptible of varying interpretations. The board came to the conclusion that it could not accept a doubtful interpretation in this regard which was inconsistent with all the other known facts and consequently rejected these newspaper stories as not founded in fact.

On all the information available, therefore, it is the conclusion of the board of inquiry which reviewed Mr. Powers' case and of the Director of Central Intelligence, who has carefully studied the board's report and has discussed it with the board, that Mr. Powers lived up to the terms of his employment and instructions in connection with his mission and in his obligations as an American under the circumstances in which he found himself. It should be noted that competent aerodynamicists and aeronautical engineers have carefully studied Powers' description of his experience and have concluded on the basis of scientific analysis that a U–2 plane damaged as he described would perform in its descent in about the manner he stated. Accordingly, the amount due Mr. Powers under the terms of his contract will be paid to him.

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